

ROUGHLY EDITED FILE

ADVISORY COMMITTEE ON ACCESSIBLE INSTRUCTIONAL MATERIALS IN
POSTSECONDARY EDUCATION FOR STUDENTS WITH DISABILITIES

COMMISSION MEETING
MORNING SESSION

FEBRUARY 25, 2011

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>> CHAIRWOMAN DIETRICH: I would like to call this Commission to order, please.

Good morning. I'd like to -- in a minute we're actually -- and my apologies to Maria and the legal task force. We've been asked to take a few minutes to talk about the testimony that we had yesterday. The public hearing yesterday. But before we get into that, just a couple of logistics. Again, I want to remind the Commission that if there are other speakers that you would like to hear, please to let Skip and Dave know and we'll make arrangements. Our next face-to-face meeting will be May 3rd and 4th, the multiple perspectives conference at The Ohio State University. And particularly for those of you on the legal task force it might be good if we could setup some time to talk to Scott Lissner who is one of the premiere legal minds in the disability field.

And that is his conference that he hosts there at The Ohio State University. Again we have an April 1st teleconference meeting that are you going to be getting more information about, but please block out the day if at all possible. I know that some of do you a lot of traveling, so if it is a

travel day for you, if you can maybe try and schedule so that the bulk of the day you are at a destination so that you can at least attend on phone.

Also from the presentations yesterday, the Access Text Network has left materials over on the side table. So anyone who would like more information about Access Text Network or information about how to contact them that is over there on the side table.

So now I would like to offer for the Commissioners who were at the public hearing last night who might like to make some comments about what we heard, if somebody might be willing to start that off.

>> LIZANNE DeSTEFANO: I saw Jim touch the microphone. You want to start, Jim?

>> JIM FRUCHTERMAN: I thought it was amazing. We had 15 people testify, something like that, which is not what we were expecting. And the stories were really vivid. People were sharing basically the pain that they had experienced, in many cases a lot of it. I'll just pick one story.

There is a blind junior or senior, he is in his 3rd year, junior, at a local university here who wanted to become a computer programmer here. As a matter of fact, he is successfully a computer programmer right now and has his own company and wrote an accessible Twitter client that I had heard of. So it was like, whoa, I have seen this. And basically he cannot get a computer science degree from a major state university. Because to get computer science you have to take math to take math, you have to use the University's own completely inaccessible math testing system. And basically the only accommodation they're willing to offer him was a volunteer student. And this is for a calculus class. So he is like -- so you will never guess what he has done.

(Laughter)

And so his OCR hearing something sometime the next month. And, of course, what he shared with us is I cannot stay in university for eight years if I win this OCR complaint. I've already lost my chance to get this computer science degree. I am going to go off and be a computer scientist without a degree. But it was clear he was fighting the fight so that the next blind student that goes to college at this university isn't boxed into what he did say? Music or social work.

>> VICE CHAIRMAN WENDORF: Polysci.

>> GLINDA HILL: There were three.

>> JIM FRUCHTERMAN: I thought that was interesting.

>> CHAIRWOMAN DIETRICH: Thank you.

>> LIZANNE DeSTEFANO: I thought that was very powerful story. I think that the other thing that came across were issues of transition from high school to college. The differences in levels of service that students receive in high school versus college, the different needs. And I don't know where that fits in our charge. Maybe in best practices. But to think about the best way for minimizing the trauma during transitions in terms of access to instructional materials.

>> VICE CHAIRMAN WENDORF: We heard from a number of people who are attending the learning disabilities conference, and some people who were past Presidents of LDA, and we also had amazing stories to tell about their own families, and the difficulty in getting accommodations, services, whether it was in K-12 and in a number of cases also postsecondary. We heard from one person who zeroed in not on the 4-year or the 2-year, but really technical programs, Vo-Tech programs, that were focused on in some cases individuals with GEDs and how difficult it was really to get the proper kinds of services and access to instructional materials for them.

One person in particular, though, really stood out, quite different, young woman who was diagnosed with a significant learning disability, but rather late, in early adulthood. She lived on her own at age 15, was on the streets, substance abuse, a variety of issues. Pulled herself together, and got herself an associate's degree. Moved into the hotel business. Actually -- she couldn't have been more than 25, but actually was part owner of a hotel, sold it. And is now pursuing a business degree, a BS degree at University of Florida. She told her story about how frustrating it was to try to do this online, with online learning, that, you know, all of a sudden she'd hit the wall. There was no way for her to access the instructional materials anything, and essentially was told, you know, "We've got to try a little harder. Maybe you're just not up to it."

So she is an extraordinary person, and has found other ways and has found her way to disability student services, and getting support there, and getting more face-to-face instruction, and it seems to be working for her. But really an amazing story that she told.

>> CHAIRWOMAN DIETRICH: Is there anyone else? Glinda? There you are.

>> GLINDA HILL: I think we heard from parents, too. Parents who were concerned about -- oh, I'm sorry. We heard from parents, too. We heard from parents who were concerned about transition as well. Transition in that at 18 while you are responsible for payment and you have no rights to knowing what your student is doing on campus, and also you are expected to leave your student's life at 18 when they transition into the university setting. And, again, these are students that parents have had to really fight for to get services. And I will speak to you now as a parent, as a parent of a student who was a very good academic student with a medical condition. We went through disability services, too. And we registered in the office, and I sailed on my merry way thinking I trust it, I believe, and I have a student who did nothing for an entire quarter in a university setting because he was ill.

And he had a very significant medical condition. He had juvenile diabetes. And no one ever checked on why he didn't come to class. And we had to go and get him and take him to the hospital. No one cared if he wasn't coming to class. It was on the books that he should be given medical treatment. And we called the clinics, and they said, "That's his responsibility to check in with us." And while it was, even when we called, they would not go check on him. We had to go and check on him. So I can understand people sending their 18-year-olds. We don't let them drink or smoke until they are 21, and so the parents who spoke last night resonated with me. And I am here from the U.S. Department of Education. But certainly some of the things that they said, they were not in my mind -- I was reflecting on it last night, too late into the night.

It's not a good thing to hear some of these stories at 9:00 at night. We may want to do this early in the morning.

(Laughter)

>> CHAIRWOMAN DIETRICH: It's very emotional.

>> GLINDA HILL: Truly it was. And I would say that the next time we do this, I would hope that the whole Commission would sit in on this, because I think that it really will make us think more about how we look at this work. I think that it would be very beneficial to us all. Regardless of what your position is on the group that you are representing, I really truly think there was something in each of those stories that each of us should hear.

>> VICE CHAIRMAN WENDORF: The young man from Florida State, blind computer scientist, hopped a greyhound for two hours to come to do that. And he was hopping on one to go back. Right?

>> GLINDA HILL: Yes. I walked him to the lobby. He couldn't get a Greyhound. He was not going to get back until 2:00 A.M. he had arrived here and come here for a 5-minute talk to us. And he had a two-hour ride back to Tallahassee. And so he spent four hours on a Greyhound bus to come speak to us for five minutes. Very passionate young man. And he was doing this on his own funds. There was no organization supporting him. He is very passionate about what he is doing. Very interesting people. And these are just two stories. You can imagine the many, many. I get called a lot from them, and it's very touching to see people face to face. And I see it as a wonderful opportunity for us, too it makes the work real. Thank you.

>> CHAIRWOMAN DIETRICH: I think the one thing that I would just add that it highlighted for me was how uneven the services are. I mean, we heard a lot of stories about colleges not stepping up, and then -- I have to pat myself on the back here, and then we heard how in California the K-12s are not doing as good a job as the community colleges are. So it's just not even. It's not predictable. You can't just go to your local school and assume that it's going to be able to meet your needs. And that's a very difficult thing. I mean, I tried to put myself in the position of a young person trying to pick a college, and I know when we did it there was a choice of my mom wasn't going to let me go to UCFC, so it was San Jose State. That was just it. But if I had a learning disability, or was blind, and that was my only option, would it have been enough?

I don't know. So that need for the transition, for educating faculty about what it means for someone to have a learning disability, the fact that are you not going to grow out of it. That was another shocking thing that we heard about how once you were up to grade level, then the support systems were pulled because now you were doing okay. And "okay" was all that was expected. There was no expectation of success. Just of passing. Which was shocking on a number of levels. One, that they should lower the bar so far. And the second thing was that when the high-stakes testing folks look at whether somebody should be allowed accommodations or not, one of the things that they looked at was has there been a consistent patterns of accommodations that have been used over time.

And if they got pulled on you when you were in 7th grade because you were now up to grade level, well that then says to them, "Oh, well, you don't really need these accommodations."

So there are a lot of issues there.

Ashlee?

>> ASHLEE KEPHART: I know that in my experience in my high school and junior high school career. I had the same exact experience. Every time I would go to a new grade or especially when I transferred to high school, I had to go in and explain why I still needed all of these accommodations. They would rather I didn't have them and stay at about the "C" average for my school than to need accommodations so I would be able to excel at it. It seemed more like they just wanted everyone just to get by and I was doing fine so why did I need it?

>> LIZANNE DeSTEFANO: I think that the other message that came across was the difficulty with disclosure. And we talked a little bit about that during the day. But this was not so much an emotional difficulty, but there was some financial and technical difficulties, too, that if you didn't have current testing many colleges and universities were not willing to do the testing, or if they were willing the length of time that it would take before you would be tested would be very long. So many people had to incur the cost of testing themselves, which was very, very expensive. And the idea of having to present a lot of paperwork and go through a lot of form filling out in order to qualify they felt was kind of antithetical to many of their disabilities where they have a lot of difficulties with those executive functions.

So one thing that I think we want to think about is the beneficiary class and how can we find out ways of identifying those students that are more humane and financially reasonable.

>> ANDREW FRIEDMAN: I wasn't here yesterday --

>> SKIP STAHL: Microphone.

>> ANDREW FRIEDMAN: Oh, sorry. That we talk to our youth frequently. We heard and we talked about this in our committee group. Test something a serious problem. Once I go from high school to college, I have to be retested depending on the college I have to pay. And so comment I make if I was sick one day, how am I not sick the next day? It doesn't go away. And testing creates a huge financial burden on the population, as well as when you start dealing

with taking any advanced tests, that you are now dealing with a private testing company that makes you re-test and denies it a lot of the time because they don't want to put through any accommodations. So whether you are taking, you know, law degree tests or a broker test, take your pick. We actually have a blind board member who has to take the Series 7 test every couple of years.

He has to re-qualify to be blind every three years to take his Series 7 test. So the testing companies are a big part of the problem there, and also incredibly expensive. The other thing that we hear a lot from our users is that they'll actually pick college based on disability services. It become as requirement. And it's incredibly different what they also say is that when you get turnover in the office, the office can get totally blown up. It's so specific to the individual in that office, that all of you a sudden you are in a great disability office and funds get cut and one or two people go away, and now your services actually go away with it. So the lack of consistency through the system is absolutely huge.

The other thing that we hear a ton, and Ashlee can chime in, we still get a lot of our users that transition from college -- I'm sorry, high school to college. Their parents still read to them in college. They're on the phone with their parents three or four hours a day or a week, because they can't get access to enough of the content. So still you don't lose the parent in this whole equation, even once you go to college. The parents are still doing a lot of the reading and a lot of the help. But the parents have no rights. I mean, zero. And I can tell you from a student -- I don't even get his grades. They won't tell me how he is doing in school. All do I is pay the bill. Then send him the bill.

Parents have zero rights in the college environment. So are you totally left at -- nothing personal, Ashlee, -- but an 18-year-old to take care of themselves.

>> CHAIRWOMAN DIETRICH: This is an interesting discussion and we need to cut it off and move ahead to legal. Because we've cut 20 minutes into their time. My apologies, Maria. We will see if we can give you extra time if you need it.

>> GLINDA HILL: One more quick thing. A dual diagnosis came up, too. Students who had a dual diagnosis of learning disability, that's something that came up just to put that on the record, too.

>> GEORGE KERSCHER: When we reflect on these, I think that we have to figure out what -- how that informs what we do, if there are areas for recommendations that we haven't touched on that we figured out from these testimonies, then we need to get that.

>> CHAIRWOMAN DIETRICH: Frankly, I don't see how anybody could not be gifted who compensates for themselves and get by. I mean, truly. If you can sort that out on your own, you clearly are gifted.

Maria, please.

>> MARIA PALLANTE: Okay. Thank you. Is this on? You can hear me?

>> VICE CHAIRMAN WENDORF: The volume seems to be lower today.

>> MARIA PALLANTE: Good morning. I think -- so we have a couple of different things happening with legal this morning. One is we have a fabulous guest speaker, Tracey Armstrong who is down from the Boston area just to meet with us. And talk about the copyright clearance center. And I want to give her sufficient time to speak, but also she is going to stick around so that if as we have questions and go through our discussions and we have questions about they could help, she'll be here. Probably not only a national expert but the international expert for the United States on these issues.

And we're going to talk a little bit about the work that we've done to date at kind after global level. What have we been discussing in the legal task force? And then we'll drill down into some of the key discussion points and share with you how we've teed this up in the task force and get a lot of feedback to head into the next phase. I think that's the goal.

And then embedded in that I was going to do a short presentation on licensing fundamentals because it became apparent to the legal task force that licensing is one of those words that people may think they know what it means, but they're not really sure. And copyright is different than in other places. So I will do that I think now, but I will shorten it and just to make sure that Tracey doesn't get cut off. So how does that sound?

And then let me introduce the members of the task force. So Peter is to my left. Jim Wendorf served ex officio as our vice chair. Mark is not here. And Jim, where are you? Jim Fruchterman is over here. We've had Betsey from the

Department of Ed sit in on most of our calls. And, Skip, of course, and Mary and Scott usually also are always on the call. So thank you all.

So I want to introduce Chris Reed from my office who is sitting in the back here. Chris came to the Library of Congress from the Department of Justice. He actually did the classic detail in the fall, and then we stole him.

(Laughter)

And he has been working to support the Commission in a lot of different ways, research, writing, whatever we need. And particularly helped with the licensing handout that you should all have everybody has that. So I am going to speak from that now just for about 10 minutes before I ask you guys questions.

So first thing you should know about copyright is that it's intellectual property law, intangible property. It's just like patents. Just like trade secrets. Property. When you license copyright, you're licensing normally one of the exclusive rights or a few of the exclusive rights that binds the copyright. So if you think of copyright as a pizza with lots of different slices, those are the different kinds of exclusive rights. And copyright owner can license different pieces to different people for different periods of time in different geographical territories for different purposes, and they can do it on the non-exclusive or exclusive basis. So you can imagine that when you are looking at that from the perspective of trying to clear rights, it can be daunting right from the start.

On the other hand, there is great flexibility for kind of maximizing who gets to use it and it's not the case that once you license rights to one party you can't license it to somebody else. So that's the kind of happy tension that exists.

There are complications we don't have time to go into such as work made for hire doctrine which is essentially a legal fiction that says even though authors create this work, the copyright has vested in their employer. So if you are an employee after university, perhaps you don't own a copyright. Or it fits into a legal definition which is essentially perhaps an encyclopedia. There really is kind of a master author which might be the publisher, but then many different authors will put that together, none of which are really the kind of master author that we have in mind.

So there are huge battles in work for hire. Just FYI, between authors and publishers and composers and music publishers and recording artists, and everybody under the sun. And those will get litigated for sure and already are.

But none of that is so important to us right now as to understand how the marketplace works. So I think in the last phone call that we had, we did go through all of the different exclusive rights. You have them in the handout. There is a tendency when we talk about accessibility issues because of the history of some of the provisions that apply, I think of the reproduction right only, the copying. There are other things that are important going forward. So when we hear people say things like textbooks are changing, they're more interactive. You might not be talking about just the reproduction right going forward. With the copyright you might be talking about the public performance right, the ability to perform the work if there are bells and whistles in music and dramatic readings, things like that.

There might be derivative work issues. And that's another exclusive rights, the ability to prepare derivatives based on something, the easy example is a movie based on a book. But it could also be an interactive version of something that didn't used to be interactive. That's a derivative. So the point is that those things are licensable, and some of those rights are not embedded anywhere in a current exception to the law. And shouldn't necessarily be. But that's something that we should discuss.

So you have the rights, reproduction, derivative works, distribution, in the case of some works the right to perform it publicly, the display right. The display right is not the right to display art in a museum, it's the right to display it, for example, on a website. Sounds like the reproduction right. Sometimes it is the same rights. Sometimes it's different. Sometime it overlaps with public performance. It gets very complicated in the digital age. But that is an exclusive right. And in the case of sound recordings to perform the work publicly by means of transmission, again, this is a very complicated issue, but most of the world has a public performance right for recording artist as opposed to just the musical author. The author of a musical work.

The United States has a partial one. And they've been moving towards a full one for a long time. But if you think of any song that you love, the test is do you love the song because of the song, or do you love the song because of who recorded it and sings it? So if you love the Aretha Franklin version

or do you love the song. Because often Aretha Franklin is singing other's work and not given the credit that her rendition made it famous. Just instilling the love of copyrights.

(Laughter)

All right. So there are three major areas of licensing: Individual or direct licensing, collective licensing, which takes a variety of forms, and statutory licensing. Individual license something obvious. I am the author of a book, I license it to Peter. Peter publishes it, I get Peter the rights that make us both happy. So I may give him the reproduction right, the distribution right, the ability to possibly create derivative work because he is University Press. However, if I was granting the rights to Simon & Schuster, I might say, no, I really want to take my own shot with the movie for my book. I am going to keep those rights and license them myself. The point is that you can't always assume that the publishers have the rights. And they will tell you that it drives them crazy that they don't have all of the rights that they need.

In a transaction where they would like to give what you they need they can't. Classic example of this is the people book settlement that's pending. So there are many, many, many issues in that settlement. But one of the issues is that the parties that came together, the authors, publishers and Google said even if we wanted to do this through licensing, the fact is that we have old contracts. They didn't anticipate electronic rights, digital rights, transmissions of works, display rights on the web. So even if we could find all of the parties, they are still alive, we can trace the chain of title, we're probably not going to get to a conclusion where it's clear as to who owns what. And different courts, of course can make it hard and go different ways.

In California which has their own rule of law for copyright, and the 2nd Circuit in New York, they've been dueling for years almost on purpose. So if New York says this, then pretty sure the 9th Circuit will say something else. With interpreting old contracts there are two ways to go one is to say that digital rights looks and smells like reproduction right and publisher has that so we'll give this too, versus it's not clearly delineated, it was not anticipated, therefore, it's reserved to the author. So this is why we need new and exciting forms of licensing to kind of bring

this all together and make it work in the marketplace as opposed to experiencing complete gridlock.

Collective licensing is designed to do that. So collective licensing a form of which Tracey will discuss operates on the premise that it would be good for everybody if you could do one-stop shopping. So how many of are you familiar with ASCAP or BMI, but next time you go to a restaurant and you see the AMEX sign, you should see a ASCAP or BMI sign if the restaurant has the license to play music. That could be as simple as playing the radio, or it could be playing CDs, it could be playing iPOD®, it could be having a live band. But essentially in order to perform anyone else's song you have to have a license for the musical work. That underlying composition with ASCAP and BMI. And there are three. But they all have different repertoires, slightly different focuses, and competition is important in the marketplace.

So that's a form of collective licensing that we have had in this country since about 1912. It's worked pretty well. There are other kinds of organizations that license other kinds of rights related to music. And then there is CCC which Tracey will talk about which started looking at collective forms of licensing for books. Mostly around photocopying. And the idea is that you as an institution or as even possibly an individual would get a license with this collective management organization, and in doing so you get access to anything in their repertoire. And you can do all kinds of different creative licensing within that. You might need long term, you might need blanket, you might need just particular works, you might just want a license for a particular event or publication, but you don't have to go track down everybody in the chain because they have the authority to sub-license to you.

So that's how it works.

Largely, collective licensing is a voluntary membership mechanism, so composers join ASCAP and give ASCAP the right to represent them and license on their behalf. In the art world there is Artist Rights Society, and artists join a couple of our organizations, and then a few want to use an art image in your book, you go to them and you don't have to go trace down the heirs of Picasso.

So that's the voluntary form of it. There is something called extended collective licensing which is a Nordic model. It's been very successful there. It's been used for schools, for libraries, for educational uses. And George I think

probably know a lot about this having worked from the stakeholder platform, but extended collective licensing is a hybrid between a mandatory license and a voluntary license. So the emphasis works in reverse so that you can assume that if an organization came to the table and negotiated a collective license, you are in it if you fit within that class, unless you opt out. So, for example, if the University Presses went to the table and the other side of the table were Universities, and they said, "We're going to allow you to do the following with all of the works that we represent in our universe," you can do it unless our members opt out.

This is what the Google book settlement was attempting to do, not the case. We heard a little bit about the case yesterday, the publishers had sued Google for mass copying without permission that is true. That is unresolved. Google thought it was fair use, publishers and authors did not think it was fair use.

The settlement of that case which is still pending because it's a class action but it needs to be approved by the courts created this kind of opt-out mechanism. They didn't do it legislatively, but they did it in a private settlement but it needs to be endorsed by the courts. But it's that kind of system. All of the parties come together, the author's guild, AAP, and they say that our members will allow this to happen unless they sign up and say, no, count me out, and then it becomes force of law. So you can see why that's incredibly useful for the user. And then there are all kinds of questions about is it a real opt out? Does the author lose his exclusive rights? How does it all work downstream? But in general that's what you need to know about collective licensing. Short of Tracey's presentation.

And then statutory licensing is mandatory. Statutory licensing is limitation on exclusive rights just like an exception is limitation on exclusive rights. So a statutory license is in the law, and instead of the parties coming together and negotiating rates, the government does it for them, or a rate court does it for them. We have a number of these in our law. They are all around things where the market has completely broken down or it would be completely inefficient to have individual and collective licensing. Satellite retransmissions, cable operators, those are the kinds of examples that we are deep statutory rate fights happening all the time. They're not usually permanent. And,

in fact, right now Congress has asked the copyright office to look at whether we can repeal three of the licenses that we have on the books for cable and satellite transmissions.

On the theory that the market's broken for a while. It's just complete chaos. But at some point technology has to move forward, and licensing has to become more efficient. And that's the goal that we need to get back to. So that's the general outline.

So why don't I stop and see if we have any kind of basic questions on any of those three forms.

>> GEORGE KERSCHER: Could the extended collective licensing, could like the international publisher's association, and/or AAP negotiate a license like that and then individual publishers opt out if they want?

>> MARIA PALLANTE: So the short answer would be, sure, they could. It's all in the details. So they would have to figure out what the scope of the license is, and what the benefit of the license is. Because it's a hybrid, the exciting thing is that they get to create -- they're not bound by a governmental rate. So they can come to the table and say, "You can do the following things on your Universities for the following purpose under the following rate, and we agree that you represent University campuses, and we represent publishers for these kinds of books for these kinds of pieces. And we're going to provide a clear mechanism for people to cosmopolitans out of that."

But that's the structure. Now, the hurdle is that we have nothing like that in our current law. So it's new. But as I said, it's gaining traction around the world because nobody wants a statutory license because it's not permanent, first of all. Nobody wants to create market failure because that's not good for anyone in the long term. And, on the other hand, we recognize that for some kinds of uses even where collective licensing might be the answer, the form of it might be better if you could have approval first and pay second as opposed to kind of a one-off, what are you negotiating on a one-on-one basis. Anyway, the world's expert on collective licensing, Taria, and she is the co-chair --

>> GEORGE KERSCHER: She's no longer.

>> MARIA PALLANTE: No long, okay. Any other questions?

>> JIM FRUCHTERMAN: International? George is exempt, but international, does that change?

>> MARIA PALLANTE: She said or AAP, so I didn't differentiate. But U.S. law is territorial. So if we're doing extended collective licensing under Title 17 which is the copyright act it would have to be whatever publishers have the right to license.

>> CHAIRWOMAN DIETRICH: A couple of points of clarification because I am naive in this area. You are saying that there are places in the world that are doing this? So there would be models that we could look at?

>> MARIA PALLANTE: Yeah, so the Nordic countries, you know, everything is easy in the Nordic countries.

(Laughter)

>> CHAIRWOMAN DIETRICH: Yeah, well they're the size of Los Angeles.

>> MARIA PALLANTE: They're very, very good on public policy issues. The reason that this was such a troublesome issue in the Google book settlement is because it was ultimately for commercial profit. And that's the U.S. Government strongly, strongly opposed the settlement in its current form, the one that's pending with the court. If you don't look at that, but you look at what they were trying to accomplish and you kind of substitute other kinds of uses, the question is what would be the intended beneficiary class and what would be the purpose? Is it a public interest purpose that's sufficiently narrow that one could get to a license that makes sense both because the right's holder is getting paid, but also because it's efficient and cost-effective? And the problem with licensing when you get into complicated transactions is that by the time that you clear all of the rights, pay all of the people, and get all of the permission, either it's not timely or it costs too much to do all of that work, and it ends up more to pay the license.

So that's why people throw their hands up and say by the time they do all of that, it will cost me \$6,000 to do the search of the heirs, and contracts, and the art in all the world, by the time that I do that just to pay the \$200 license I need pay, or the \$5,000 license I need pay, you begin to get into market model transaction questions of costs. So publishers started CCC for that reason. They understand that there has to be cost-effective basis and forms of licensing. Yesterday we heard a little about how the digital age presents all of these exciting new market models. Embedded in that, the sub-issue is exciting new ways to license. So that's the goal.

>> CHAIRWOMAN DIETRICH: And then you mentioned rights courts are there courts that just deal with rights?

>> MARIA PALLANTE: Rate courts.

>> CHAIRWOMAN DIETRICH: Rate courts. Oh, I'm sorry.

>> MARIA PALLANTE: It would be good if there were courts that specialized in copyrights. But every once in awhile you get a court that's never heard of copyright.

No, there are rate courts that sometimes the rates are set by Congress and administered by the copyright office for copyright. And sometimes special rate courts deal with that and we have something called the CRD which deals only with royalty issues.

>> GEORGE KERSCHER: So you probably have seen or heard about the elements app, application for teaching and explaining periodic table of elements. And I think that we're going to see more apps, little apps in books, and then some books which are just completely an application instead of a traditional text-oriented book as we know and love.

>> MARIA PALLANTE: Right.

>> GEORGE KERSCHER: Now, are those applications inside that book, digital book, fall under the same copyright as the rest of the book?

>> MARIA PALLANTE: If it's just a chain-of-title question are you asking me, it depends on who produced them and how the publishers acquired right to include them in the book. But chances are there are several licenses, unless it's a work for hire, there are several licenses feeding into that ultimate book.

>> GEORGE KERSCHER: Well, there are going to be images and all kinds of things that are part of that package.

>> MARIA PALLANTE: Right.

>> J. BRUCE HILDEBRAND: George, there could be 1,000 licenses for a single textbook. That's the thing that's separating. If you've got a really large book, you've got lots of photographs and lots of sources, you've got problems putting them out there.

>> MARIA PALLANTE: So every rights holder recognizes that going forward people really do want to get as many rights -- all of the rights that they need from as few sources as possible. So whether that's the publisher or CCC or some other organization, or if the University has a direct license where they can grant rights to faculty or whoever

needs them, however it's going To work they want it to be efficient.

I think here in this room we have been operating on the premise of publishers can throw me dirty looks if they want, to that publishers Are the rights holder and the copyright holders That we're trying to protect it starts with authors. The authors, unless it's a work for hire, the authors are the creator that often fall off the table and then also get all the blame when something goes wrong. But they are trying to make a living by creating whatever it is that they're creating, and then putting it into the chain of distribution. And while we could say, it would be a lot easier if authors would just give publishers all of their rights, and publishers would give CCC all of their rights, point of copyright is to protect authorship and so you can't kind of cut them out as matter of expediency.

What you can say is that if are you going To keep your rights, then you also need to come up with some form of licensing that makes sense. So they were trying to create the author's registry for that reason. And have some kind of ability to control their rights. Photographers want the same thing. Photographers have no way to allow people to find them. They're trying to do metadata, they have a few organizations, but no way to achieve licensing. I don't want to end this on a depressing note, but it's broader than the marketplace right now.

>> CHAIRWOMAN DIETRICH: I would like to remind the Commission that when we're talking about authors in the higher ed space, we're often talking about our faculty members, and that's something that you can never lose sight which is different from the K-12. But we always have to walk that line between we want the materials, but we need to not alienate the same professors who may be the Nobel Laureates at our office.

>> MARIA PALLANTE: I want to mention a few more things and then introduce Tracey. There are many different kinds of creative licensings. Creative commons is one that has a spectrum of options where any kind of author can either put immediately into the public domain their work, or it can publish it with basically a permission attached to it. You can use this for educational purposes as long as my name is on it, as long as I get credit. Those are expedient forms of licensing meant to speed up transactions. Open source, which I think somebody mentioned yesterday, is another way of saying I am kind of dedicating this to the public domain.

Now, those two models, I think this was also said yesterday, the question is always quality and how we facilitate those. So they can grow up alongside of traditional publishing, but they're not going to replace it.

And there are many, many kinds of authorships. And we're talking about primarily authors that contribute to the higher ed and education. Bloggers are authors, right? People who post things on Facebook are authors. There is a large, large spectrum of authorship. And I think that we're primarily also talking about published authors in this Commission, or published works I should say. Except I think that we also heard yesterday that for the first two years published textbooks and other kinds of published works are important to curricula. After that if you are talking about doing research as a college student, and I hope that we're not limiting our students to published works only, that they should have the full benefit of getting the works that are unpublished.

Any other questions on licensing?

>> VICE CHAIRMAN WENDORF: Could you just give us a thumbnail sketch of fair use?

(Laughter)

>> JIM FRUCHTERMAN: In 30 seconds.

>> CHAIRWOMAN DIETRICH: Starting now!

>> MARIA PALLANTE: Yes, and I will say that I did a keynote on fair use for public knowledge which is a great consumer group that's out there representing the public on copyright. It was last month or the month before. It's probably on our website. But they had something called World Fair Use Day where they were basically celebrating fair use. So fair use is one of those American doctrines in copyright that we're really proud of. It's intertwined with the First Amendment and free expression. That's its history. And essentially recognizing that although copyright is a form of property, any other times when the Democratic ideals that our nation was founded on take priority. Press shouldn't have to stop and get permission every time they need to use something if it's ultimately for news-worthy purposes.

So that's a clear example.

Over time, in book publishing in particular, excerpts became really important. So at what point are you quoting something to make a broader point and creating a different

work that you shouldn't have to go back to get permission. And at what point are you using it in a gratuitous manner where you don't have to put the photo in, or you don't have to quote from the entire passage, it's a little more sensational and gratuitous. So that's the tension. At what point does it make sense? At what point is it something that you are trying to get away with it? It's a complicated doctrine. It doesn't exist in most places in the world. It exists in a few other places, but not in the robust way that we have it. So it initially was a judicial doctrine meaning that courts developed it.

Over time it was like, yeah, no, yeah, there is copyright, but this should really be kind of a fair use and they kind of coined that term. In 1976, when we redid our Copy Right Act, there was a massive rewrite, it became effective in 1978, we codified it and that became Section 107. So Section 107 took the judicial doctrine and created limitation or exception in the Act with four factors that the courts have been looking at anyway, and that's how courts still proceed through fair use. They look at the nature of the work, how much it would take them, and is there an affect on the marketplace if you use this without permission? And I think there are some key cases along the way. One of the cases involved photocopying, Williams versus Wilkins. That was the first time where a court basically applied fair use at the high court level for an entire work.

So a photo copying of an entire document, for example, for non-commercial purposes. Up until then it had never really been kind of wholesale copying like that. In other countries, photocopying and mass copying is handled through extended collective licensing or collective licensing. It might be licensing at a very low rate, or even for free, but it's a licensing model, and not an exception model. So fair use is extremely important to copyright law. Extremely important to the country. The reason that publishers and authors should Google in the Google case is because they were claiming fair use for mass copying of entire libraries, and we have never had anything that broad before. So that's I think a 5-minute history. I guess for purposes of this Commission, Jim, just to bring it back, there's no broad exception for education in the Copy Act.

There is no systemic issue for fair use. And Chaffe was not a broad enough foundation for all of the kinds of things that everybody wants to do. It's difficult for campuses to create policies because what might be fair use on her campus is not going to be fair use on her campus either because it's a

different book and there is a licensing model available for that book, or it's a different kind of use. So all of these facts make it very difficult to create policy. And that was intentional. It's not supposed to be a straight-out exception. It's supposed to be a case-by-case basis.

>> GEORGE KERSCHER: So when Jim Fruchterman brought scanning to the masses and the blind person had the print book --

(Laughter)

-- it's true. I mean, the whole theory there was this is fair use. I own the book. I am going to scan it. I can read it myself. Then extend that next step was into the DSS office where, you know, they could scan this book for the student and act as his agent, and it was still in everybody's mind fair use. And the break point was when the DSS office wanted to share that somewhere else.

>> CHAIRWOMAN DIETRICH: And archive it.

>> GEORGE KERSCHER: And archive it and save it and not dot same thing over and over again. And that became a controversial issue. So the reason for everybody now who uses the assistive -- I can't say it, it's ATN, but Chris' outfit, they have to show the receipt of the book in order to use the service to prove that they've got it. But then ATN provides to the DS office a license that takes it out of fair use or copyright, the exception for people with disabilities, and brings it all under licensing. I just thought I would throw that out there as background for everybody.

>> MARIA PALLANTE: And a lot of fair use, you know, fair use is a term of art in some respects because it's only really fair use if a court has said it is. And to some degree the higher court has said it is. The Supreme Court has certainly weighed in on fair use. The problem, of course, is always very fact-specific cases. So you get very fact-specific rulings. And so it is possible that a case could go all the way up and you get a ruling that you apply broadly to all college campuses and everybody could create policies around that. But any time that the application of fair use begins to look systematic, it goes against kind of the origins of the doctrine, and you don't get courts to buy into that very often. So if you are saying everything every professor does as long as it's for educational purposes is fair use, there is just not a ruling that's going to happen.

If you get -- if you had something much more narrow that a student making a copy in one set of circumstances, and maybe

not even the whole book, for a class, and it's not available through CCC or some other licensing mechanism or ATN, you know, you can get to facts where it should certainly be fair use. How do you extrapolate that to a broader, meaningful policy is the challenge. Which is why everybody reverts to it's better for everybody if there is efficient licensing, whether it's free licensing you know, all of that is determined by the kind of use. But if we're talking about non-commercial use, then you can certainly argue that the rate should be quite reasonable.

>> JIM FRUCHTERMAN: So going Back through your different tiers of kinds of licensing solutions from individualized licensing, collective licensing, extended collective licensing, and statutory licensing, the last two are the ones that need essentially Congress to enact a law in Title 17, the Copyright law, up to that point it's voluntary, but after that it has to be written into the law saying that there is this license, and you can opt out but here is the deal is that what we're talking about?

>> MARIA PALLANTE: Yes with a caveat that there is a case pending before the 2nd Circuit at the moment where the AAP, Google are trying to do it judicially.

>> JIM FRUCHTERMAN: Okay.

>> MARIA PALLANTE: And it's really framework. It depends on what license are you talking about. So for extended collective licensing, it's creative framework that, yes, you can go and negotiate and come up with something. We're going to stay out of it but we're blessing the framework. I didn't mention antitrust and I am sure Chris is an antitrust lawyer by training sitting behind me, but there are other issues. So I didn't say, for example, that ASCAP might operate under a consent decree because of price-fixing issues. But let's put it this way. These are not hurdles that are insurmountable, but they are interesting issues. If the business model can only operate with consent decree from the government, you have to look at that as, is that the right model?

And how do we fix that issue? So if the publishers and the authors and the libraries all got together and said, "We agree that for this rate we're going To let this happen," and there are only a couple of players in the space, then you get to price-fixing issues.

>> JIM FRUCHTERMAN: I will point out that we have to talk to AAP about a market model and how great it would be. And they're like, don't talk about this. We can't have this

conversation. You talk to our members that sign up with you, and that will be different.

>> J. BRUCE HILDEBRAND: To make that point clear, when I have a meeting where my members are on, I can't talk business issues really. I can talk political and policy issues. And I learned the first time that I had a meeting I put, you know, we're going to talk about state efforts and federal efforts and all of this, and then I left a space like most people would, other. I immediately got a call and said you will remove that and never that again. We do not want to see it again. I am like, what? You work for me. They're like, no, no, in this case you basically work for us.

>> GEORGE KERSCHER: So this is antitrust?

>> J. BRUCE HILDEBRAND: Yes, sir. It's very, very difficult. We have to have a councilman on the phone on every conversation we have.

>> MARIA PALLANTE: Last point I will make is that when licensing works really well, the illegal infringement and piracy rates should go down. So iTunes is a classic example of that. If it's easy enough, efficient enough, people will use the legal platforms because they work. They're not getting viruses, and everything else works, too. But that's the goal. It should be so efficient that people prefer to use it than dabbling on the dark side.

>> CHAIRWOMAN DIETRICH: Maria, how does what you are talking about interface with your office? So, in other words, does the copyright office actually do something in this process, or I guess I am not understanding how that connection -- what that connection is.

>> MARIA PALLANTE: So the U.S. copyright office -- that's a good question, Gaeir -- administered the copyright law. And a large part of the law is geared towards copyright registration and creating an office for records and transfers and licenses and things like that. And we also have a statutory responsibility to advise the U.S. Congress and substantive copyright issues. We have a statutory responsibility to advise agencies upon request by providing information and technical assistance. State Department, White House, Justice Department, Commerce, et cetera. And we -- the substantive agency that participates in international copyright meetings, government to government with our like-minded organizations, so cultures of ministries, organizations like that, we also implement the regs that create the copyright act.

The copyright act is Title 17. So just like the Department of Ed has rulemaking authority related to the laws that it administers, anything that requires regulation is our rulemaking. So DMCA came up yesterday, Section 1201, and that requires a triennial rulemaking and we implement that. Statutory licenses we have an entire licensing division that collects money that comes in through statutory licenses invests it, holds it, and then distribute it is to the parties upon either a court order or some other agreement between the parties. It's extremely complicated, and this is the satellite cable side of copyright law. People come into it that way. And it's one those of things that if you find a copyright lawyer who wanted to be a poet, or a recording artist, and they love culture except for the people that like satellites.

(Laughter)

>> CHAIRWOMAN DIETRICH: Those strange people.

>> MARIA PALLANTE: But in a nutshell that's what we do.

>> GEORGE KERSCHER: How can you start with collective or extended collective licensing if the antitrust lawyers won't allow it on the agenda?

>> MARIA PALLANTE: Yeah, that's a really good question, George. It's a question for Bruce, I think.

>> J. BRUCE HILDEBRAND: We have a counsel who is a contract lawyer back here. How you do that, Liz?

>> LIZ: I am not going to participate in this discussion, Bruce, I am sorry.

>> J. BRUCE HILDEBRAND: She would actually have lawyers lawyering with other lawyers on this thing.

>> MARIA PALLANTE: Let me take it out of this context for a minute. So in the Google bookcase, you know, where everybody is mad at us on the Google bookcase. All of the normal constituents, the authors and the publishers, you know, wanted to settle that case, and the government, and Department of Justice said no way. It violates copyright law. It violates antitrust law, too, by the way. But really interesting stuff in this case if it were legislative. As opposed to kind of a back-door judicial decision. And it needs a little sunshine and oxygen. It needs the normal legislative deliberations, but we can't argue with the premise that better license something important, and possibly

under certain circumstances opt out makes more sense than voluntary signing up.

The question is, if we were starting from scratch, would we have immediately gone to a commercial distribution as the tail that wags that dog? Or would we have started with educational uses? The kinds of things that people so want to cram under fair use out of desperation because there is no other workable mechanism. So that's what the government brief says, and I highly recommend that you read it. If you don't have it, I can send it to you.

>> CHAIRWOMAN DIETRICH: Can you send that to Skip so that he can post it in the drop box?

>> MARIA PALLANTE: Sure. Yeah. There are two government briefs because there were two iterations of the proposed settlement. But I think that what I am saying something that the way to get it under spotlight is legislatively, and we I think will see Congress very interested in looking at these kinds of licensing mechanisms. Now, they will go slowly because they are Congress, and they deliberate very slowly and that's what they're supposed to do. But they'll be looking at different forms. And I think that it's fair to say that for mass digitization which is the Google issue, they'll ask the question who should benefit? Who should be allowed to do it? Should the search engines be allowed to do it if libraries aren't allowed to do it? Should commercial entities be able to do it if schools can't do it?

What happens to the scanned material? Who gets to benefit from it? How do you put a legal on top of that? And who could be an oversight hearing. What's the full spectrum of issues we're looking at? What part of it needs extra love and care? What part of it should be left to develop? So I think I just want to kind of bring this group into the broader copyright discussions that are happening out there. And stay involved in that world because this is moving forward.

Does that help, George?

>> GEORGE KERSCHER: Yes. Very much so.

>> MARIA PALLANTE: Great.

I think we should move to Tracey who, I'm sorry, Tracey, are you waiting patiently in the back. But would you mind coming up? I would like to introduce you.

Everyone, this is Tracey. So Tracey Armstrong is the President and chief Executive Officer of the copyright clearance center. She has come down from Boston just to be with us this morning. She run as CMO, a collective management organization, and CCC is the only organization that we have that does any kind of collective licensing related to something other than music or satellites and cable transmissions. And is really well -- I think we should take full advantage of her being here. We'll learn a little bit about the CCC. We'll learn a little bit about collective licensing. But I think that she will have a lot of information for you about what it's like to have publishers who want to license, but maybe aren't licensing fast enough, or efficiently enough to full the market that's out there. Is that fair to say?

>> TRACEY ARMSTRONG: Yeah.

>> MARIA PALLANTE: Dynamic and energetic and brilliant Tracey Armstrong.

(Applause)

>> TRACEY ARMSTRONG: Wow. I am going to start singing, R-E-S-P-E-C-T!

(Laughter)

So I have a comment on every single thing that was just discussed.

(Laughter)

>> GLINDA HILL: You have permission to sing that.

>> TRACEY ARMSTRONG: Do I? I think that I do.

I just want to tee it up by saying I am not a lawyer. I am someone who has worked at copyright clearance center now for I guess going on 22 or 23 years. You lose count after the first 20.

(Laughter)

And, you know, in short, I work at a place that's really tough cocktail party conversation. So you meet someone and they say, "Hey what do you do?" And I say, "Well, I am kind of in licensing." They say what does that mean? I say intellectual property licensing, and the next question is are you a lawyer? And then the next question is do you want another drink?

(Laughter)

So in short, if I were to sum up like what does copyright clearance center do? We make copyright work. That's really what we do. So a lot of the things that we just discussed, extended collective licensing, yeah, looks like a great answer. In a country of 5 million people you can do a lot of things from healthcare to copyright that are really different than you can do in a country with half a billion people or more than a billion people. So it's just a totally different situation, plus we've got the history of how things have developed, and I would say that it's not -- nothing is the promise land. If I could have ridden in here on my purple unicorn I would have and delivered you all of the best answers in the world. But these are just complicated issues.

It's like the biggest onion, and you are just peeling it layer after layer after layer, and sometimes your eyes water. This is that. Extended collective licensing in some of the Nordics, some of the complications are, I am squeezing a few of my comments in on the previous bit, some of the complications are who gets paid and how those royalties are divided up on the back end? Also works from other countries that are used under the extended collective in those territories. So some really complicated issues there.

Let me get to CCC, the organization that is making copyright work. So what are we? Who are we? Well, we were organized -- Maria is correct -- by publishers and also by authors. So the organization under our former name now known as the author's guild, the AAP, and also a group of users. As a matter of fact, when this company, this non-profit organization that is now copyright clearance center opened, it opened on the first day, got the copyright act of 1976 took effect, and its first office was a small room in New York in the offices of the AAP. They just basically gave some office space to the cause on the grounds of the foundation of these three parties, the Author's Guild, the AAP, and this user group that had come together.

And this organization was created at the suggestion of Congress, and there is actually a paper called the elements of a clearinghouse which if you read it it still rings true together and it's part of the legislative history of that work that was done on the Copyright Act of '76.

So we manage 350 million rights, and originally we were created because there was some real fear that technology, new technologies, were going to cannibalize the publishing business. We'll never be able to sell books when they get that photocopy machine. They'll just buy one, photocopy them

all, and we'll all be out of business. After we were going to be cannibalized by the photo copy machine, publishers were going to be cannibalized by the fax machine.

(Laughter)

And after they were going to be cannibalized by the fashion machine, it was the -- remember we didn't have PCs, remember that when it was all -- had you the workstation with the keyboard and the screen or one unit that weighed 150 pounds? Remember the Wang terminals and stuff like that? They were going to be cannibalized by that. And then it was the PC, and so on and so on. So that was a pretty grim outlook. And I think that we can say in hindsight that so far so good. We don't have a lot of overwhelming cannibalization that hasn't been useful for the -- other than what has been useful for the market I should say.

So we started off by managing -- I should say that we are a voluntary licensing organization. We are opt in. All of our licenses are non-exclusive. I have had a lot of Kool-aid out of the copyright clearance bubbler, and I will say think that really do believe in this. I think that there are cases for the opt out but if there is any way it can be an opt in, it should be. It's better for the user, and it's better for the rights holder. And you are probably sitting here saying, "Well why is it better for the user? Because if you can just get the government to give you permission to do this, we're all -- it's like you get every right you need on day one."

No, you don't. Nope, you definitely do not. And the reason that you don't is that they will only create a, I don't know, statute or whatever you want to say for what they know at the time. They would not create something that would have envisioned the iPad. They wouldn't have -- if we had this for academic licensing, we would not have considered that kids are going to read stuff on mobile devices. I mean, is it remotely possible that could have happened? Yeah, it's remotely possible, but probably not. I mean, the Kinko's case was in 1990 -- I don't know the year it started, but it settled in '91, April of '91 I think.

Who was thinking about this in 1991? Remember CompuServe? Could you have lived without the web on your phone during CompuServe? I remember looking at this and saying we were taking orders for licensing over CompuServe, and I remember saying to my colleague this is going nowhere. Well, that was actually going nowhere, but it did go somewhere.

(Laughter)

So we managed 350 million rights today, and those I am happy to tell are you not just for photocopying. In fact, photocopying is probably the lowest thing on our list today. We are licensing all different types of material. We license text. We license moving images, video clips. We license still images. We license blog contents, eBooks, in-print books, out of print books, journal articles, excerpts, bits of code from O'Reilly Media. If you can create this and you want to license it, we can help you to do it. We license all different types of digital uses. We license the creation of new works. You can actually through some of our services get permission to reuse works in a documentary on a television show, if a commercial.

In a new book, in a brochure. You could use it in a course pack. You can use it for corporate research. You can use it in a sales presentation for your client. These are not one size fits all licenses. There are a huge variety of licenses that you can get out of the portfolio that we are brokering today. And you know how we built them? One right at a time. One right at a time. And we're at 350 million rights and growing.

So it's definitely possible. I guess I am here to kind of -- I am the pragmatist maybe? I am the reality check saying this can be done. You can do it. I actually brought a couple of things that might be relevant from the academic licensing that we're doing that might be helpful for you. We do not license K-12. I will say that right off the bat. So this is all higher ed is what I am talking about.

Okay. So it's opt in for the rights owner. It's opt in for the author. It's opt in for the creator. It's opt in for the commercial publisher if they want their rights in our systems they can put them in. If they don't, they don't. What happens is, and the same opt in on the user side. This is an honor system. We do not encrypt things, lock them down, batten down the hatches so that nobody can get access to content because we're about licensing. We're about seamless access. We're about enabling the sharing of content. Facilitating the use. Publishers want their content used by as many people as possible. They just want some control over where that goes in the market. They want to be able to control their brand. If it's medical, what about the integrity of the content?

That's a really easy example, medical, but it's also true in all different types of content. We don't want to get an image that has some sort of a watermark over it because we've

hijacked it off some inappropriate place. That's not useful. So think about that.

That is voluntary on both sides. We want to make it as easy as possible for users. I call a little bit of my job sometimes the referee, the chicken and the egg, you know, horse and cart, whatever you want to say. You get enough users collected, that's a powerful voice to go back to rights holders and say, "Look, here are options." And rights holders can be, and are I can tell you from experience, very innovative. I think sometimes particularly commercial publishers get an awful bad rap for not willing to do this, they'll never give us the rights for that you can't believe what publishers giving the rights to today, but not everybody understands exactly what all of those things are. So CCC is licensing, this kind of mass collection of rights today to 35,000 companies.

We license companies with employees in 180 countries, and we are licensing employees outside of the United States. We're licensing about 1,200 academic institutions, all colleges and universities. Those are all inside of the United States. Although we do license under the licenses that we sell those academic institutions, students of those institutions regardless of where they are. So if you are distance ed, you are cover under our license. If you travel, the content travels with you.

Some kind of accolade stuff. We're -- who knows about copyright clearance center? I am sure you are not home saying I can't wait to get down there and hear more about copyright clearance center! But as far as the outsell 10 to watch list, outsell is a research and list firm. It's based in California on their 10 to watch list they've got four -- in addition to us, three other companies, Google, Yahoo!, MicroSoft. Rights are an interesting thing. I was watching CNBC yesterday, and it's not easy to get to Jacksonville from Boston when you book late.

(Laughter)

So in the commute there I was watching CNBC and the President and CEO of DirecTV was on. And he was showing his fabulous iPad app, and the CNBC commentator was saying, but come on, we need streaming! We need streaming! We need streaming! And he finally looked at her and said it's not about the technology. We're there. It's the rights. I was recently at a meeting with a gentleman who is in movies, and we were at a dinner event the night prior, and I said, gee, you know, my favorite movie is "Out of Africa," which is

true. And I said, you know, when I go to bed, I would like -
- and you can tell I am old. I have a TV in there. I go to
bed, and I say I would just like to put in O-U-T, "Out of
Africa," dial it in, each if I pay \$5, it's totally relaxing.

What's the issue? Why can't we get to a system where we
punch in the title of the movie we want, I will pay,
whatever. You know said? Music rights. It's complicated.
They want to get the content out, but there are a lot of
stakeholders in the game. So it's not a lack of wanting to
do it.

Voluntary opt in, I need to say a tiny bit more about
that because it's so important. I have a slide up here that
basically I just want to reiterate that we have individual
contracts to get to the 350 million rights. We do not
appropriate other people's rights. If you don't give them to
us, then we do not have them to consequently give to someone
else on the user side who really needs to use them. And
there's a lot of rationalization that you can do around the
fair use bit. My kind of summary on the fair use bit is good
as a defense not as an offense. That's a good way to think
about fair use I think for the common human being here. A
couple of other things. This just reinforces everything that
I just said. No statutory license in the U.S. that requires
anybody to work with an organization like ours.

No statutory assist. There are such things and I think
almost every other country. I don't think that I can show
you a collective licensing organization that's doing it
exactly the way we are. I always say that because there is
probably room for one to be started on some continent
somewhere think that have not heard of yet but as of now no
knowledge of that and no regulatory authority that's
supervising us either.

So believe me, we have stakeholders. So a couple of
little diagrams of how this works. Excuse me.

A couple of points think that just want to make here.
The uses change over time in collective licensing. This just
a diagram of how collective licensing works, just trying to
reiterate some of the points. Here we are just -- collective
licensing at its essence is grouping rights for re-sale on a
mass basis. We collect this big massive rights, and how we
bring them into the market is really, really variable, okay?
So we may do that on a one-off basis, kind of picture a la
carte at the local cafeteria or on the restaurants that you
can go to and it's an all you can eat. \$10 and refill your

plate as many times as you want on a blanket or repertory basis.

Now, one thing think that really want to -- a couple of things think that want to point out here, sometimes the licenses that we sell come with content. That's true in the case of many of the image licenses that we sell. It's also true in text. We do a lot of book chapters, or journal articles, or things like that and we're actually doing some work on campus in this regard that I do want to talk to you about today.

The license has to be adaptable because the way that users interface with their content changes. You know, they can't just read it on their mobile device. They have to be able to make notes. They have to be able to put markers in. They have to know equivalent after digital Post-It Note. They have to be able to go back this is reasonable stuff. And publishers are reasonable about it. I should say rights holders, but we do talk a lot about publishers. So, in fact, as far as this goes on the kind of library side, and I understand that there's no librarians here. Is that right?

>> JIM FRUCHTERMAN: Accidental librarians.

>> TRACEY ARMSTRONG: But no representative of the library community, which I just have to say wow. I was so surprised.

>> GEORGE KERSCHER: I am secretary general for a consortium of libraries.

>> TRACEY ARMSTRONG: I asked if there was a library community represented because when I think about interfacing with content on campus, I think about the library. But one of our largest U.S. systems recently stated to us their written goal is to license everything. License everything. That's their whole library system. That's their intention over their next whatever their strategic period was. I don't remember if it was 3 or 5 years. It was some future period. That's the direction that this is going. It's all licensing all the time.

Licensing involves compromise. And this is just the other piece of that just saying, okay, so we've got rights from many sources available in one place, and then royalties collected from content users and distributed to rights holders. This is pretty efficient system. It does make accessible rights to the markets. It is very scalable. I think if done well. And it does involve compromise. And I kind of say a good thing -- I guess -- and I have a slide

coming up in a minute on what a good effective collective license looks like. I think it looks good when everybody loses a little.

(Laughter)

Right? Because the rights holder is kind of sitting there saying, well, gee, I am really concerned about effect on the market. Is this going to cannibalize primary sale? The librarian saying I've got to protect patron privacy. I have to let my patron get access to what they want. I am not a librarian, so I defer to the librarians in the room. That, you know, this is very important to me. I've got to get patrons access to the content they need when they need it and I've got to protect their privacy. And then we've got maybe the desktop user, the bench scientist in a corporation, or the student or whoever who is just saying, it's 2:00 in the morning, I am doing my homework, can I just get the thing I need to read and get it in a way I need to get it on my laptop while I am laying on the bed at 2:00

in the morning when I am doing my homework or when I am a researcher in the airport doing whatever I am doing for the new drug I am developing. So everybody wants everything. But everybody is willing, in my experience, everybody is willing to concede something to get to a middle ground, a reasonable middle ground. And that's really what licensing is all about.

So how do we license? Well, we license these two kind of high-level categories. One is the pay-per-use, so one permission at a time. Here we're very often licensing individuals rather than institutions. And these licenses can complement repertory licenses. Repertory licenses are generally sold to organizations. So in trying to keep my comments targeted on your area of focus, which I am not an expert on, we generally license organizations.

We generally here are looking at the benefit of a repertory license is a common set of rights, a common denominator because if you are a large organization of very, very large extremely large global company, I went in and we were doing some discussions about something. And they said well we have a policy that no one in this organization can e-mail content. And I said, really? Why? Why do you have that policy? And they said, well, we've got the rights over here, but we're not sure that we have them here. We definitely do not have them here. So there's just this -- it's just this unbelievably uneven footing, and there's too much risk. So we just decided that we are going to lock this

down and not let any employees e-mail anything. I just think that's nuts. I think that's crazy.

So we went in and said, okay, well, let's try to find some base common denominator, and we went back to publishers and said, well, they bought the content from you, and if we sell them this license that incorporates these other rights, can they e-mail this content? They said yes. And now they're e-mailing this content globally. That worked out. So it's a common set of rights. And generally repertory license is one payment per year. It's kind of an all-you-can-eat model.

I think that I have already said this it's faster, more convenient, more efficient.

Okay. Let me get to this. Attributes of a well-developed collective license. So some things that might be relevant for your consideration I've mentioned the voluntary opt in and non-exclusive already. I mentioned the compromise. Format neutral and device neutral. I am going to talk to you about a couple of licenses that we're selling for your consideration. I don't mean specifically for your consideration, but just as models for your consideration. And this is generally also individuals licensed through their organizations. There is a standard set of terms and conditions. There is negotiability here. So we do have rights holders who have specific limits. You might have a newspaper who says I don't want this used in a political advertisement.

I don't want one of my articles used in a political advertisement, or in a firearms or tobacco advertisement or some sort of an endorsement of firearms and tobacco. That's pretty reasonable for a major newspaper I think we can probably all say. Maybe not. But I think that it's reasonable. These are kind of things that we would put out there in terms of the additional terms that might apply on top of the standard terms. But there is no variation in the base of the standard terms. That's how we can get the allow e-mail for all of their employees. Format neutral and device neutral. So when you license with an intermediary -- well, I cannot speak for all intermediaries, but when you are buying a license with us, you can receive the content however you need to receive it and you can use it on this is a mobile device.

I can use it on your phone. You can use it on this laptop. You can use it on whatever you need to use it on. You paid to license it. So that's fine. Remember, we're about enabling here. And content through some vendors content is

not always available directly from the publisher. Publishers authorize -- have authorized agents that bring content into the market. And authorized -- when you are a licensing through CCC, through our generally our corporate licenses, our academic licenses, if a authorized digital copy is not available, you can create one. It's as simple as that. Now, if a authorized digital copy is available but it's only available through a vendor who DRM locks it, we actually are working with publishers on enabling that to come into the organization DRM-free, and have had fabulous success with this, by the way.

Leading publishers top down. Biggest in the world working backwards and allowing this today. And many of those publishers, not just through CMOs like copyright clearance center, are already doing that directly. They don't need an intermediary for that they're doing it directly with those user organizations. So that is fairly widespread. So I want to point that out.

I did miss anything up here? Licenses available as part of packages from the third-party vendor. What does that mean? Go where the user is. Right? If the user is in Iliad, the OCLC very popular library app, the licensing should be built into Iliad. Ours is. If you are on Balkor's books in print, get licenses there. Our licenses are built into something north of 30 major applications. Blackboard we have a module for a copyright. There are a variety of different ways that you can access licensing tools. And I think that's very important. Many forms of payment mechanisms, you know, it's not feasible necessarily for the researchers on the subway or on the ferry, Staten Island ferry to go into work to put a credit card in it's just not going to happen.

We need to have it on a deposit account or some sort of pre-pay. I think this it would be the same situation for students as well. And that's why licensing the organization is such a good thing.

Okay. So here is one of the licenses that I want to talk you to about today. Annual copyright licenses for our higher ed institutions in the United States. Started working at copyright clearance center in 1989. We did not have this. The Kinko's case was going on, and the organization tried to start a basically a blanket license for colleges and universities, and at that time colleges and universities laid out their wants and desires and laid out what they were willing to pay. Rights holders laid out their wants and

desires, and laid out what they were willing to charge. And in between was the Grand Canyon.

(Laughter)

And try as everybody might, the Grand Canyon could not be traversed on that journey. And the Kinko's case settled, and a pay by the drink licensing mechanism was developed, and that went on for several years. Another attempt was made, and that also, you know, we weren't at the Grand Canyon. It was something a little bit smaller. But, again, very difficult journey, and people mostly fell off the camels and didn't make it to the other side. So that didn't succeed in 2007, after a long journey on the academic license side, and after models had been developed in many, many other markets, this model was brought effectively to the academic market. We were really, really proud of this license. So this is one license. It's campus-wide coverage. It's millions of information sources.

What can do you with this license? Everybody on the campus can use it. Faculty can share with other faculty. Faculty can share with students. You can post it digitally. You can create digital copies when they are not available. You can use it on your mobile device. It covers students no matter where they are in the world. You can use it distance ed. Whatever. All of the above. You can actually store it in limited -- you can't create an institutional repository. A couple of things that you can't do with a license, okay? You can't create an institutional repository. You cannot cover to cover works. Most kids aren't learning that. Custom publishing is the name of the game. There are some cases where you need cover to cover.

That's not covered under this license. There is no interlibrary loan covered here. Interlibrary loan is covered separately. Entire work copying on out of print books is something that we do. We do that pay as you go. That's pay by the drink. So that's what I said that they can complement the repertory license, so it's not to say that they are not available at all, but they're not covered under this.

For small password protected repositories by small groups of faculty or researchers or students, you can create those repositories under this license. That's been a big hit. This license was developed with Middlebury College. We worked with them, and that lasted years, I think two years or something like that. I may be wrong on the margins. And we went through all kinds of learning. I mean, just listening to the customers' problems and their pain and all of what was

going on with the content on their campus. And then we went back with some publishers who were really coming to the table and saying, okay, we're ready. We're going to cross the cavern. We're going to get this done. And that's what happened. So this is -- this has really been a huge success.

I can give you more information on it. But there are a lot of campuses in the United States that are using this small and large, like close to home for us, UMASS medical school. Further south the University of Texas. All over. All over the country, all different types of colleges and universities. Small, large, public, private.

Second thing I wanted to tell you about is something that is not public yet, but will be soon, and it's a new program that we call Get It Now. So this program provides just-in-time fulfillment of a journal content at this phase. It is focused on journal content. This does augment a typical interlibrary loan, ILL operation at a campus. And it began with Cal State. Interesting when I was researching for this presentation, it actually our team went through an American Foundation for the Blind audit in August of 2010 for this application, which I believe was a requirement of Cal State. And so our application for this is accessibility compliant. It's been live on the campus for something like two years now. And we've been -- you know, improving it, and, of course, we had to go through this process as well this is a really interesting experiment, frankly. We didn't know where it was going to go. Cal State approached us and said that we have some pain here, and we would like to experiment and see, you know, can we work together to get something done? And so we said, sure, we'll try it. I wanted to show you this because this is an example of kind of the possibilities. There is a problem space, and you are clearly dealing with a significant problem space here. How do you kind of use licensing to close the gap? And, you know, it's negotiation. That's really what it is. And it's deep understanding. So it was us sending a team out to Cal State, sitting in the libraries at Fullerton, et cetera, an enormous system, and really getting an understanding of, okay, what are the pain points?

Well, kids study late at night. That was one of the pain points. In fact, we found 74% of orders through this system was after the ILL office closed. 74%. I mean, they really study at night I guess. Holey smokes, I don't have any kids in college yet, but I am on the way. Heaviest use on weekends. I found that really surprising. I guess they're cramming for Monday. I don't know.

(Laughter)

And weekdays after 5:00 P.M. Probably they sleep late because they are up so late. No subscriptions were cancelled. How about that on the publisher side? So we had the publishers that are participating in this are three of the largest publishers. They are the three single largest publishers in their space, in the world, that are participating in this. And we went to them and we worked with them on everything from terms to pricing, and we presented the user case, and they said, you know what? This is really reasonable. Let's give it a try. So they gave it a try. But, of course, just like anything else they said, well, you know, what does it mean for subscription? During the pilot, two subscriptions actually from one of their libraries were added.

So that's not bad for a pilot. So that kind of went against the whole fear that subscriptions would be cancelled. The rights holders asked for certain data, not patron-specific. There is no patron data. We don't have it. Nobody has it. That's not true. There is an e-mail address. So we have it, but we don't store it and give it to them. How else could we get it to the user sorry, I retract that. So we committed to 24 hours when we started because this content doesn't exist in the library there. If it existed, there would be no problem space. This is not something that they're already subscribing to. This is something that kids need. It's highly specialized content. And they need it in a short amount of time probably because it's the middle of the night and they left it to the last minute.

(Laughter)

So we agreed to a 24-hour kind of delivery period with a hope -- really a hope that we could do it in eight hours or less. And our average fulfillment time is less than three minutes. And we have been overwhelmed with the success. We now have many other campuses using this in addition to Cal State. And we have a waiting list of both rights holders who want to get in, and users who want to sign up. When they get the content, it comes in a PDF file. I don't know if are you interested in that. It is delivered to their e-mail account. And the way that they do discovery, so how do they even discover the metadata that they are looking up to figure out what article it is?

>> GLINDA HILL: What are you delivering? That's what I am asking.

>> TRACEY ARMSTRONG: Let me back up. I'm sorry. I am skipping around. Let's try to walk through a workflow. So the student goes on to the library website of the university. And they do whatever they do on the library website. You know, they do a search. They're looking for content. They're trying to find whatever it is relevant to the research that they're conducting. And they learn, they discover what they want, but they learn it's not available. When they learn it's not available, which is, you know, this has nothing to do with our company this is like standard library stuff. When they learn it's not available, they are then given the choice -- and this is not required -- they're given the choice to have it fulfilled through this other avenue, or whatever you want to call it.

>> GLINDA HILL: Interlibrary loan, whatever.

>> TRACEY ARMSTRONG: Like you would through interlibrary loan. So you electronically send it to a process where you have to put to your -- where it tells you that are you doing that. It's not fooling you. There is a little co-branded little label there that says that this is a joint experiment, pilot project, between the library and this other organization, and that would be us. And it does require you to put in an e-mail address. They don't pay. There is no charge for the student. They don't have to put a credit card in or anything like that. And then the content is delivered to their e-mail address. They can use this content. They can save it. They can put it -- you know, use it on their phone. They can use it on their laptop, whatever. It is not encrypted.

It's DRM-free. So I wanted to point that out just because it seems that it's maybe a useful -- well, it's useful in a couple of ways. It started out of nowhere. We weren't sitting there planning it. We just heard about a problem space and said, all right, like how can we attack this and help this user out?

>> ANDREW FRIEDMAN: Who does pay?

>> TRACEY ARMSTRONG: The university pays. The university pays and the royalty fees are set for the context of the use. So the royalty fees have been in consideration of that. I would say. I want to give credit to everybody in this food chain here because the suppliers have been really thoughtful about how they've gone at this.

>> ANDREW FRIEDMAN: Got it. Okay.

>> TRACEY ARMSTRONG: And the terms as well. They've been really thoughtful about it.

>> JIM FRUCHTERMAN: How does this entire library of journal articles end up magically in PDF.

>> MARIA PALLANTE: Let's hold off on the question. If you can wrap up, and if everybody is willing we can delay the break for 15 minutes for questions.

>> TRACEY ARMSTRONG: And I think that this is the last thing that I have which is just trying -- God, this is an amazingly complicated thing that you are working on. And if you are someone coming to speak to a group like you and do you some -- you know, there is no such thing as brief research to come and prepare to talk to your group. So it's very, very complicated. But thinking about there are CMOs, there are collective management organizations in the world that are already licensing, I'm sure. Someone here was on the stakeholder platform? Is that you, George?

>> GEORGE KERSCHER: Yep.

>> TRACEY ARMSTRONG: So Taria is on our Board of Directors. Every now and then I kind of get an earful about what's going on with the print disabled issues. And, of course, she is also an advisor to many other CMOs globally. So there are in Australia, Germany, the UK, all over the place there are collective licensing organizations that are involved in helping in whatever situation there is. And in some cases they are statutory licenses, and in some cases not. So there are certainly a few things here. A CMO can help in licensing institutions on behalf of their visually impaired constituents, or print disabled if I am not using the right language I apologize. Could build access into workflow. Whoever insert name here, I would really suggest trying to work with existing workflows because kids go where kids go, and trying to get -- it's hard enough to get them to read the text in the first place, and to try to get them to go to a whole new place.

In other words, if they're searching in the library system already, why not keep them in the library system. I am sure that the librarians would really love that, too. And so that seems like a win. Aggregating rights from rights holders for the use of works outside of the U.S., too. I think that's important. These kids travel. They have to have -- if I am a student at Cal State, I am a student at Cal State when I many in Boston or Paris. And I should still have access to the content that I need to do my research and my studies. File format and device neutral. And I think that DRM

neutral. That's what I am here to say. And CMO could validate the rights of the content user as well. I think that there are some ways that collective licensing could be helpful here.

That's all that I have to say.

>> MARIA PALLANTE: That was fabulous. Thank you.

(Applause)

If we could delay the break and if you could raise your hand if you have a question I can write down a list or call on you. Let's start with Gaeir, and then Jim and we'll take it from there.

>> CHAIRWOMAN DIETRICH: I actually have a bunch of questions. So the first question I think is the same one that Jim wants to address is what are these PDFs? Are they graphical? Text based? Accessible PDFs? Tagged?

>> TRACEY ARMSTRONG: Are they tagged for students --

>> CHAIRWOMAN DIETRICH: Do they have logical reading order?

>> TRACEY ARMSTRONG: No. So they are not -- no. They are not.

>> GEORGE KERSCHER: Where are they coming from?

>> TRACEY ARMSTRONG: The repository for the content is the publisher.

>> CHAIRWOMAN DIETRICH: So it's basically whatever the publisher has is what's sent. So is the publisher the one who is holding content?

>> TRACEY ARMSTRONG: Publisher is holding the content, host content.

>> CHAIRWOMAN DIETRICH: You don't host content?

>> TRACEY ARMSTRONG: No. This is not a solution, a current in-market solution for print disabled people. I want to stress that. I am not implying that it is. I am just saying model-wise as framework, it's certainly has some merit for discussion. So, for example, if the -- it seems that there is not an ample amount of content clearly that's available in the format that it needs to be for the constituents that are being served by this Commission. So that obviously is a problem.

Whether you create that all up front or you create it on an as-needed basis, I mean, one of the things that we've done because in academic, you know this, the material that's used

is so esoteric. I mean, you've got some kid using something that literally no other kid will ever use. But they need it when they need it the way that they need it. So the way that we've built the licenses, and particularly the academic licenses, because actually there is more concentrated use in corporations. They use less varied material. The way that we've built the academic licenses is, okay, tell me what you need. That's what we'll get. That then stays in the license, and then we just perpetuate and grow from there. So if the student -- this is patron driven. And that's a big deal these days.

What does the patron need? The patron tells us what they need. We go and get it. Now, in this case you have to insert -- and I am not minimizing the complexity -- insert getting it in a way that they can ingest it appropriately into their devices or whatever that is. There is another step that would need to be added there.

>> CHAIRWOMAN DIETRICH: So when you say format neutral and device neutral, are you basically delivering PDFs, and it has to be played on something that can play a PDF?

>> TRACEY ARMSTRONG: No sorry. Format neutral means that our license does not require a PDF. They could be a word file. They could be anything.

>> CHAIRWOMAN DIETRICH: That's up to the content holder, the rights holder?

>> TRACEY ARMSTRONG: It's up to what -- it's within the ecosystem of whatever that license situation is which could be from me, my human person to your human person, or my corporation to your academic institution. So whatever that ecosystem needs could be served by the license. And that's true today because the license is not requiring it. In this case, this specific example of this pilot project, PDF has been the fastest, easiest, most convenient thing available for good or for bad. I am not advocating for that I am just saying that's what it is. And it was the fastest way for to us get this service out to these students, and these universities are really benefiting by it for these students.

>> CHAIRWOMAN DIETRICH: Just so that I am understanding, essentially what you are say something that in terms of the copyright clearance center, your device neutral and format neutral, it's up to the copyright holder -- or the rights hold whatever they want to deliver, and it's up to the user what they've negotiated essentially?

>> TRACEY ARMSTRONG: That's right. Our licenses are not restricting that.

>> CHAIRWOMAN DIETRICH: Got it.

>> GEORGE KERSCHER: And is this journal content, or is this snippets of books and things?

>> TRACEY ARMSTRONG: What thing?

>> GEORGE KERSCHER: The content being delivered.

>> TRACEY ARMSTRONG: In this small little pilot experiment think that talked about? Yes, it's journal content. In the license, the academic repertory license that's a wall-to-wall license for all students, all faculty, for the storage in the small sections, these are very, very different licenses. We probably sell -- I don't even know how many licenses we sell.

I should count to give you a number. But it's a wide portfolio of licenses. So the academic wall-to-wall including blogs, photographs, we actually sell an image license to academic institutions. That's all different types.

>> GEORGE KERSCHER: I was talking about this project that you are just describing with Cal State.

>> TRACEY ARMSTRONG: So this experiment has started with journal articles.

>> GEORGE KERSCHER: So for other people, there is MLM which is a XML-based journal, and Prism which is another XML-based mechanism, so it's not absolutely necessary that it has to go to PDF. It just might be that that's what was negotiated.

>> TRACEY ARMSTRONG: Sure. These journal publishers are some of the same journal publishers that are advocating the future of the article. You have seen their components of the article, and some of those publishers are actually today publishing highly advanced journal articles. They're available on platforms multiple ways, multiple technical frameworks availability. So these are some of the most advanced publishers in that regard but for this we were focused on my comment a moment ago that they were very thoughtful about how they approach this market. This is something where content needs to be available fast, and, frankly, within reason of, you know, on the price side. So I think that there was some real desire to make this quick and reasonable.

>> JIM FRUCHTERMAN: So I want to go back up to books, just because that's sort after Touchstone for us. So imagine that I am a library with 100,000 books under copyright exception. And I go to you guys and I say, all right, I want to serve a population that doesn't qualify under the copyright exception. What do I have to pay to deliver a copy of this history book that's used in freshman year in college to a dyslexic student? Is that something that you could answer today? Is it something that you will likely be able to answer tomorrow? What would it cost? What would it look like?

>> MARIA PALLANTE: And just to be clear, a library not connected to one particular university just so Tracey understands.

>> JIM FRUCHTERMAN: Yes.

>> TRACEY ARMSTRONG: I need to grip on this question. So we're talking about not a university library?

>> JIM FRUCHTERMAN: national library. We've got a bunch of contacts.

>> TRACEY ARMSTRONG: I zoned out during your question.
(Laughter)

>> JIM FRUCHTERMAN: Here is the problem I want you to solve. I've got all of these books --

>> TRACEY ARMSTRONG: Where is my unicorn?

>> JIM FRUCHTERMAN: What does it cost? The student says I want that. We say you don't qualify under the copyright exception, but instead we'll license this to deliver to you. So I want that book. Can you do that? Do you represent entire books? And is there a price associated with that?

>> TRACEY ARMSTRONG: The easy part of that question is do we represent entire books. In some cases, sure, we do some publishers would say there is no more out of print anymore, but let's just say that there is. There are books that we do allow cover-to-cover copying because there -- the rights holder has said allow cover-to-cover copying of this because there is not any other reasonable way for them to get access to it, although that's rapidly changing. But that's not the crux of your question.

>> MARIA PALLANTE: The business structure is something that you are not familiar with. So instead of doing a license through Cal State, the question is if there is an

independent library already in a space serving students that its familiar with, has relationships with all of these other campuses, not for the whole student body, but for the student body that has print disabilities, for example, how could the collective licensing process work? What would be the flow? It's a new realm for you.

>> ANDREW FRIEDMAN: Can I reframe it a tad?

>> JIM FRUCHTERMAN: Use the mic.

>> ANDREW FRIEDMAN: Sorry. So I think the issue is with Jim and I, we have content actually in a different format than the initial rights holder.

>> TRACEY ARMSTRONG: The required format.

>> ANDREW FRIEDMAN: So we have a required format that may be used by people outside of a disability group that we can actually serve. So what Jim is asking, how do we take our format, negotiate with the original rights holder to actually get so we can distribute that book outside of our disability.

>> TRACEY ARMSTRONG: Okay. I have to -- I am just going to qualify my statement right now and say everything I -- I am not committing to anything and I would want to check with my lawyers on everything.

(Laughter)

But here is my simple statement. Remember what my -- forget about the experiment think that just talked about the Cal State. Let's back up from that and go to the academic license that allows students to access digital content from the publisher or the publisher's authorized agent. If you or your company, whatever you do, if you are a authorized agent for a publisher creating DAISY format or whatever format files are needed for the recipient of your files, are you covered under my license. The kids on campus can get access to those files under my license because you are the publisher's authorized agent, and then they can use it on a mobile device and share it. But I want to check with my lawyer to make sure that I am right.

>> MARIA PALLANTE: So the three of you just hit on an issue that we've been talking about in the legal task force in a slightly different way, whether it is to the extent that there are these existing organizations that have these files, is there a new role for them where they get to serve someone other than what they were setup to serve under the Chaffe Amendment, right? So that's the issue.

>> TRACEY ARMSTRONG: Like mass market?

>> MARIA PALLANTE: No. No. RFB&D, Bookshare, NLS serve -- have been serving these kinds of students for a very long time. And they are allowed to do it under exception of the Chaffe Amendment without dealing with the publisher. Provided certain conditions are met, one of which is the beneficiary clause, but there are other issues. However, many students and other people, there are many other people who would like to use those files, and would benefit from them.

>> TRACEY ARMSTRONG: That was my question, like mass market, that's why I am asking, not necessarily print disabled student.

>> MARIA PALLANTE: Possibly. Our charge here is higher ed. So let's assume that they are higher ed students that would benefit from the repositories that they have. But they don't fit within the exception of Chaffe, and possibly it's not fair use. So the question is, how does something like this -- how could this be brought into the picture to make it work?

>> JIM FRUCHTERMAN: This might help you a little bit more. We negotiate licenses with publishers all the time on a one by one by one basis.

>> TRACEY ARMSTRONG: Me, too, that's my whole basis.

>> JIM FRUCHTERMAN: We're little and you are bigger.

>> TRACEY ARMSTRONG: I am still non-profit. Sometimes at a loss.

>> JIM FRUCHTERMAN: These publishers, I go and license them, and I say you have my entire catalogue under these license terms. What I am looking to you and asking is can you replace our effort and going -- we're at 100 publishers right now. There is a lot more than 100 publishers right now. You can actually represent them and say here is a license that allows you to do these kinds of things, but all you have to do is pay --

>> MARIA PALLANTE: So it would require a few things, right? You would for that purpose be an authorized agent and publisher, and not an existing entity under Chaffe that's allowed to do things as an exception. You will have dual roles. That's the thing that we will discuss after the break.

>> TRACEY ARMSTRONG: Unfortunately I won't be up here anymore.

(Laughter)

>> MARIA PALLANTE: But the publisher doesn't have the repository of files, and you do.

>> TRACEY ARMSTRONG: Right. And the publisher is -- and through the license, the publisher is saying, sure, this student can get access -- now, here, the thing that I am a little bit fuzzy on is we want to make maybe the files available to people who aren't necessarily in this category. I am going to leave that aside. I thought I heard that.

>> MARIA PALLANTE: That's where the license comes in. They don't need a license to serve who they are allowed to serve under Chaffe. They would need wouldn't need a license to do something broader than Chaffe says.

>> TRACEY ARMSTRONG: It requires a student at some level.

>> MARIA PALLANTE: Large print, for any reason.

>> TRACEY ARMSTRONG: Okay. So I guess the answer is, it's two parts. The easy part of the answer is, yes. I mean, I think that we definitely could help if a rights holder, commercial publisher in this case, wants to make these files available, and I think if there is a reasonable case made that, look, I mean, just look at what they just allowed to happen at Cal State. I mean, reasonable people do reasonable things. I think there is a lot of -- and some publishers in this area, some of AAP's members in this area are forward thinking I think. So there is good promise there. 100 publishers really won't get you too far, right? And so you need thousands of publishers to get the kind of breadth of material that you need.

So I think that that is something that we could help on. The other thing think that want to say in the two-part answer is there is no magic bullet. So what I couldn't help you do, and I don't think that anyone can help you to do is get what you need from every publisher all the time all at once. That's a whole other, you know, that's legislation. That's a whole other kettle of fish. But in terms of on a one-by-one basis adding rights holders into a collection to be able to let students access this, yeah, I mean I think that it's fairly simple. I would see it like building on these models. So if you already -- if you went to a group of publishers and said, look, we have universities that are already buying your content. They're spending XYZ millions of dollars in content.

Because that's what they spend some of these universities, spending millions of dollars. So they are buying primary sale. They've bought a license for secondary use. The one think that described to you, not the Cal State, but the one prior, okay? So they are buying a primary sale. They're buying a secondary use license. And within the total population on this campus there are sub-populations. And these sub-populations require whatever they require. I can't comment on that further personally. So in order to serve those sub-populations we would like to do the following, and allow the following things to be done. What do you think? I mean, that's as far as -- you know, it's as simple as that. And are you basically adding it on -- I would kind of see it building on that type after license.

You would add it on to that license because here is the benefit for adding it to on to that license. After you add it on to that license, you want the kid to be able to do everything that they can do with the content under that. Why should they be able to do things with the content after they get it than some other kid, right? So after they get the content, we want it to be covered by this license I just talked to you about, which I gave you a high level of. So I think an addendum to that license makes sense. And here is the other thing. Sometimes there is a difference between kind of the -- and I really hope I'm not going too far with this statement, but sometimes the pragmatics of everyday, like, you're pragmatic, you have to get those rights from 100 companies, and you've got to figure out who is the decision-maker, go through that tree, whatever.

That's the pragmatics of everyday, and the policy, that feels like the Grand Canyon in between there sometimes. Do you know what I am saying? So you go to the publisher, and you say, look, they're saying -- we're already paying three ways, what do you think? And then they say here is my concern. And then we learn something about the publisher's concern. And we can probably address the publisher's concern which in a lot of case like the firearm and tobacco is reasonable concern. So we put that in the terms. So I think that the answer is yes.

>> VICE CHAIRMAN WENDORF: We've had discussion of authorized agents or publishers, but I want to get back to the universities, the institutions, because in what you setup at Cal State, that's a direct relationship of, you know, a deal made. So could you see such deals being made by the higher ed institutions with publishers for content in formats that are needed by students with print disabilities?

>> TRACEY ARMSTRONG: I could see that? I mean, certainly, anything --

>> VICE CHAIRMAN WENDORF: Is that efficient.

>> TRACEY ARMSTRONG: I don't think it's efficient.

>> MARIA PALLANTE: Who has the files, Jim, in that?

>> TRACEY ARMSTRONG: I think Jim was talking about the relationship. Am I misunderstanding you?

>> VICE CHAIRMAN WENDORF: It's the business relationship, but I am trying to get at the end-user, the student. What would be most efficient for the student in order to gain access to a wide variety of content required for course work as they are pursuing two-year, four-year degrees? Does it make any difference?

>> TRACEY ARMSTRONG: I think it make as difference in this way. Universities are doing a lot of very diverse things, and, you know, and the information professionals on campus are negotiating to get content on that campus that is needed to be consumed. But to think about the -- you could think about extending those negotiations for the file formats. You could. But to think about that huge diversity of material, I mean, those libraries are not purchasing every single thing that needs to be consumed for those library patrons on that University campus, and that's why systems like that ILL augmentation are needed. So we need assets, content assets, not just books, not just journals, but we need all kinds of content assets that are not necessarily going to be negotiated by the information professionals and experts on that campus.

So I would actually say to you in my opinion that I think it would be inefficient because they would need to -- their resources are already extremely thin. They are paper, paper thin. And they're getting thinner. Budget cuts, the federal funding, it's a nightmare for those librarians. To force them to try to do more with already they're cutting bone, I just don't think it's reasonable. And I can't imagine who else on the campus besides those information professionals would be the best skilled to do that. So I think that you probably want an intermediary.

>> VICE CHAIRMAN WENDORF: That's helpful. Thank you.

>> MARIA PALLANTE: Gaeir?

>> CHAIRWOMAN DIETRICH: So I wonder if you could go back a little bit to say a little bit more about the opt out versus the opt in. So what I think what I was hearing you

say was with the opt out you have to very much designate these are the rights at this time, and you have the choice to opt out of that. But if something in the future changes, where, well, now we want more rights, then there is no -- it's not easy to set that up again, is that what I was hearing you say?

>> TRACEY ARMSTRONG: I guess a couple of things. I know what are you kind of roughly saying here, but a couple of things that I would say about opt out, opt out is difficult for a couple of reasons, and this is not directly to your comment, but it touches on opt out. Let's say copyright clearance center decided to change our business model to opt out. We called Maria up and said we're going to put you guys on notice down at the copyright office. We're switching to opt out, and we're going to, you know, notify everybody. Really, you are going to notify everybody? Really, copyright clearance center? Who is everybody. I am going to notify all of the bloggers, and all of the book authors, and all of the photographers, and all the -- how are you going to do that?

That's a big issue in the Google case as well, is that massive notification process which we -- our company participated in trying to help all of our members know, and I know many, many other companies participated in as well. Opt out is really, really tough -- is a tough model. And I think it's -- you know, I guess I think of it a little bit like, well, we can kind of rationalize that this is okay, you know, like I am 17. My parents aren't home. I borrowed their car. I really wasn't supposed to. But I can really rationalize it because I drove to CVS and bought band-aids, so I did a healthcare and good thing while there on my way to the liquor store when I was 17.

(Laughter)

You know, pick up a boyfriend I wasn't supposed to see. You know, you rationalize these things. Really, I stole their car. I stole their car. But I only used it to get from here to CVS. But I stole their car.

>> MARIA PALLANTE: Let me give a global answer to that.

>> TRACEY ARMSTRONG: You don't like my car thing?

>> MARIA PALLANTE: No I do. It sounds familiar.

(Laughter)

There is a place for extended collective licensing. Somewhere. In mass digitization it came up because it's not

economically feasible to clear every right to -- multiple rights to every book in an entire library collection. So if the argument is, well, you should have cleared the rights, and the response is how was I supposed to do that? For a non-commercial purpose that begins to make a lot of sense. If it's the library that needs it or the public policy beneficiary. But for commercial distribution, there isn't -- that falls apart a little bit, and that's why the Google case is still pending and the government opposed it. It is limitation on exclusive rights, though, so we're back to that so where opt in is full buy-in of the rights holder, extended collective license something a form of putting a lien on the exclusive rights except that they're coming to the table and negotiating.

But it's not everyone coming to the table. If you are an author, it's, say, the author's guild going to the table on your behalf, even though you may not and member of the author's guild. You may not have ever heard of them, and you may not ever want to join them, but because you are an author and you are in that class, someone's at the table negotiating for you, and now are you being told that you have exclusive rights if you opt out of this legal regime. If you don't opt out, you don't really have exclusive rights is one of the questions. You may have non-exclusive rights of that portion because all of these people are using your rights. So how could you then go forward and license exclusive rights?

>> TRACEY ARMSTRONG: Maria, I think also part of her question was my earlier comment in the early '90s if the government had said, okay, you can have some sort of statutory academic license, remember pre-Kinko's, I think I said this at the beginning, I think that's what you are building on, I said we would have wanted it, but we wouldn't have wanted it necessarily because we wouldn't have predicted how usage -- we couldn't have predicted the web. It could have been very limited.

>> MARIA PALLANTE: And I heard you say that --

>> TRACEY ARMSTRONG: And I am think being Germany, for example, where we have very specific, very limited authorizations. And so here is where I am not a lawyer, so please correct me if I've gone a little bit off. But the -- it's very difficult for some of these countries to adapt and be very agile based on how the user behavior is changing over time.

>> MARIA PALLANTE: It's always hard to get licensing.

>> TRACEY ARMSTRONG: They need to go back and get updates.

>> MARIA PALLANTE: It's hard to have it not frozen in time. But you can build that into the process, that every five years there would be -- for example, the satellite statutory licenses they sunset. And then they have to be reauthorized. And then they sunset, and they have to be reauthorized. So it's a horrible, you know, drawn-out process, but that's the point of kind of that kind of structure. So you could build it in, but to your point, going backwards in time with old contracts that didn't envision electronic rights, that's one of the reasons that people are beginning to push this model. I just wanted to point out that at a global level there are parameters that would be looked at including is it -- is it really putting too much of a lien on exclusive rights?

Is the opt out really easy? Has everybody been notified? Is it necessary? Is it necessary because there is not a market solution? So the same kinds of policy discussions would come up.

>> TRACEY ARMSTRONG: And is it transparent? I made a comment recently at Columbia on this opt out piece because rights holders of ours, members of AAP, are having concerns in some countries where they have opt out available to them, but it's not clear what they are opting out of. So they opt out of one -- these are digital uses where the concerns in this particular example and they think that they are opting out of one particular digital use for one user community, and, in fact, the way that it's administered is their rights are withdrawn from an entire portion of licensing which from an opt in kind of a voluntary and also frankly here revenue. Licensing is not all about money. Creative commons is licensing. We actually have a tool that builds on creative commons called Osmo.

It's the same kind after tag that goes on content as creative commons. It's built on the CC Plus form foundation. We work with creative commons on this because I remembered breakfast with Larry five years ago, we sat at Cambridge and said we're doing the same thing. And creative commons really wanted to make commercial options available for their users. So we helped to do that.

>> MARIA PALLANTE: So I wouldn't want to discourage discussion or interest in that model, and as you said there is no one silver bullet for this. There is going to be a marketplace with diverse portfolios and licensing options,

and that's one that could have viability in the digital world. It's going to be a very slow conversation that happens in the policy circles, though, and the trick for this group would be to think of it as solving a very targeted problem that can't be solved otherwise. And that may well be the case where they have those facts. But we have to be able show that we have those facts, and we have to figure out why that was the best option. There is something called the Burn Convention which some of you may have heard of. One of the primary copyright treaties that we have that we are a member of, the United States we, and there are others, but this is the one that's really about authors.

And we have the primary, fundamental copyright treaty, and what it forbids is formalities as a condition of the enjoyment of copyright. So you can't today say you do not have copyright unless you register with the U.S. copyright office. That doesn't make us very happy because we want everybody to register, and when you register the Library of Congress gets a copy of your work, which is great for the country. But nonetheless, it's a formality. Same kind of thing with opt out. If the opt out is so complicated that you have to hire a lawyer to do it, it's a formality. It's a condition or a lien on the enjoyment of your copyright. So that's like the global, global perspective.

Should we have one more question, and then we'll break, and then we can come back? Are you going to be around, Tracey?

>> JIM FRUCHTERMAN: I want to take this from a completely different point of view. Imagine that I am a college student. And maybe this is the way that I think CCC works, and, you know, is that, hey, I want this book. Gee, I can't find it I will photocopy the library copy. And then I will essentially send some-to-money to CCC, and that makes me legal, right? That's one of the things that CCC does? Give you photocopy rights?

>> TRACEY ARMSTRONG: Yeah. We don't really license individual students, though. So that's not a realistic example.

>> JIM FRUCHTERMAN: Okay. That was going to be my question. Could an individual student do this.

>> TRACEY ARMSTRONG: Sure they can but very often --

>> JIM FRUCHTERMAN: Not in practice.

>> TRACEY ARMSTRONG: I could probably go back to the data guys and say show me an example, and they could find me

one. But it's the institution doing it for the student. They have enough issues.

>> MARIA PALLANTE: Andrew raised that, too, and this is the jaded business side of me. But probably what would happen is if the institution had enough of these licenses, is they would incorporate it into the tuition, right? Check the box, are you paying for your licensing.

>> TRACEY ARMSTRONG: I can tell you on the -- we call it the AACL, the annual academic copyright license, we actually have models on that where we actually can help them figure out how to price it back. It's extremely low. Or other methods. We actually have a team of licensing people that consult, consultants that work with the institution and figure out how to build it in it is tough. It's a long sales cycle for that license because this is not existing budget dollars, right? They have to find this on the campus. And what they are generally do something they are looking at the little pockets that somebody over here is doing licensing, somebody over here who is doing it, somebody over here, and coordinating that so that they can actually save money in a few places because this license will help them.

So, you know, these institutions are not made of money in terms of these --

>> MARIA PALLANTE: You have seen your college tuition go up? Only your parents have seen it?

>> ASHLEE KEPHART: I have seen that it's been going up.

>> MARIA PALLANTE: And is there a box somewhere on there for licensing or copyright materials?

>> ASHLEE KEPHART: I don't know.

>> TRACEY ARMSTRONG: I doubt that.

>> MARIA PALLANTE: Why don't we break, and we'll pick this up, and we're headed into the substantive issue anyway.

>> CHAIRWOMAN DIETRICH: So please be back by 11:00.

(Break)

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>> CHAIRWOMAN DIETRICH: Commission members, could we restart the meeting, please? Please take your seats. I just wanted to announce that we did get a new handout from AAP, and for those people who are in the public forum, this is going to be uploaded. Skip, can you -- Skip, can you give me

a sense when this might be uploaded so that the public can take a look at these AAP comments?

>> SKIP STAHL: I am trying to think what I put. There were two AAP documents. The larger one. I can do that probably over lunchtime? Well, it will be in drop box, but it will be posted and publicly available for next week.

>> CHAIRWOMAN DIETRICH: Anyone who is listening on the phone who is listening in from the public, those documents will be available next week on the CAST, or postsecondary commission.

Maria?

>> MARIA PALLANTE: Okay. Thanks. So we have an hour before lunch, correct, to get through -- more or less an hour? Okay. And we can always pick some of this after if the market model people would allow. Let's see how far we get.

What I would like to do now is take you back to some of the workings of the task force over the last couple of months, and ask you to put copyright to the side for one moment while we go back to the Department of Ed to Glinda and Betsey, if I could ask you to do a brief overview to remind us of the legal framework that we're working from. We'll start with Glinda. I just want to refer you back generally to the comprehensive legal outline that we gave you for the January 7th meeting because that really does have the entire legal landscape soup to nuts.

>> GLINDA HILL: Okay. Thank you. It's hard to follow like someone who can make copyright law sound so interesting. You really have passion for it. I like hearing you talk about it, Maria. Thank you.

Maria asked me to go back over what we talked about in our January meeting. And I found a few of my notes. But, quickly, I gave you sort of the framework of how we became involved in the NIMAS work. We'd been working in the area, and had funded projects actually -- we funded projects in the area for accessibility for a number of years through the Office of Special Education programs. One project that has been funded is reporting for the blind and dyslexic. That's funded through our discretionary program which is our Part B of IDEA -- excuse me our Part D of IDEA. In 2002 when IDEA was reauthorized, there were quite a few additions to the statute in 2002. And both parts of -- two major parts of our statute were affected.

Part B which is our formula grant section, and that's the section that really is our 3-21 section, or our school-aged population. And that's the formula grants to the states that funds to the program that funds students with disabilities. And under that we had the NIMAC -- the NIMAS work is funded under that. And that's where the starts were required in their annual reports to OSEP where they request their money when they request their grant money they had to say that they were, yes, going to adopt the NIMAS as the standard for their state.

Not only when they adopting the NIMAS, but they also were given the option, and it is optional, that they would coordinate with the NIMAC, and the NIMAC was setup, and I think that Tuck will talk about the NIMAC in a bit. So I won't give you lots of details there. But the NIMAC is a statutory requirement for the department that we were to fund the NIMAC which is the repository for the files, that the publishers voluntarily began to deposit into that repository. And also now that the initial -- the initial files that were put in were voluntarily put in, from then on as states began to negotiate their contracts, they included language in their contracts that said -- that required that the publishers put the files into the repository as they were purchasing books for all students in their states, or the local education agencies.

Not all states -- not all purchasing is at the state level. There are states that do local purchasing than do state purchasing. Am I correct with that now?

>> SKIP STAHL: So far so good.

>> GLINDA HILL: I thought so. They correct me on the state numbers. That fluctuates. The LEAs, too, the local education agencies, too, have the same responsibility that they will make sure that their purchasing orders have the same requirement. So that falls under the Part B of our legislation.

The Part D part we have supports for the states, and I think that's a piece that we have that I think is important for this body to understand. We invest quite a bit of money, of discretionary money, into this program and have for a number of years. Part D is the discretionary program. I'm here to represent Alexa who is our assistant secretary, but I actually work in the Office of Special Education program in the discretionary division. I am representing her because I have worked in this program for 14 years now working on these issues. And I'm the lead on our policy workgroup for the

unit, and it's cross-departmental workgroup. We involve our Office of General Counsel, our budget office because they are a very key office, and Betsey will join us from OCR now, too.

But this workgroup has been together now since about 2002 as we've been really trying to implement and trying to make sure that we are working within the guidelines of the law, and working also to make sure that our states and local groups and students are getting what they need from the state and local agencies.

The project that we funded, you see many other people in the room, but we have recordings for the blind and dyslexic, that's one project. Bookshare is another. We have the NIMAC, and it's included under our discretionary funding project. We don't manage the American Printing House for the blind out of OSEP, but it's managed out of the Office of Special Education programs and Rehab Services. There is a liaison, and she actually participates, too, on our policy workgroup. And, in fact, she asked me to do a site visit, and I've done site visiting with her. So we all work as an interagency group. So the APH is funded through the Department, and managed out of OSERS as well. That's one of the reasons why OSERS took primary responsibility for pulling together this Commission.

The Commission was actually the Congress had -- the charge was for the Office of Postsecondary Education to form this Commission. But we were asked at OSERS to be responsible for pulling the Commission together.

I think we've had quite a bit of history in this area, and that was one of the reasons that we were asked to work in it. But the investments that we've made over the years, and the experience that we've had in the K-12, I hope that we can, as I said the last time, I hope that some of the experiences that we've had, that we can share those experience, and that we can learn from them. And I think it's very important to know that without the supports from the discretionary side, really the program can't go. There have to be supports to the states. In OSEP, the decision was made a number of years ago. We have very few dollars at the state level in discretionary funds -- the federal level in discretionary funding in the disability area.

And in our 2004 amendments to IDEA, Congress made a very strong case that we should focus those dollars on our low-incidence population. We can make a distance at the state level if we focus those dollars on the low-incidence

populations. Those are populations that are very costly to serve in states, and they felt that we could help states more if we would fund our work in that area. So we have done a great deal of work in the low-incidence populations which includes students with print disabilities. And that's one of the reasons that we have so much of our technology budget line, and the rest of our personal prep line focused on it and so I am going to turn this over now to OCR, and, Betsey?

>> BETSEY WEIGMAN: Thank you. I think that I will use this one with the stand. Can you guys hear me? Can you move this one further away? Okay. Hi, everybody! I am an attorney at the Office for Civil Rights at the U.S. Department of Education. This is just going to be kind of a reiteration of what I already spoke about on the January conference call which is kind of what OCR does and how it works. Because we enforce the civil rights laws that pertain to students with disabilities, namely Section 504 of the Rehabilitation Act, and Title II of the Americans With Disabilities Act. As we kind of learned going through things at least within the legal task force, those laws don't reach us as far as where the copyright law leaves off.

And so we do have this kind of gap where students are entitled to auxiliary aids and services, but at the same time they don't fall under the Chaffe exception. But I will just give you kind of the overview of where OCR is coming from and hopefully we can find a way to bridge that gap.

OCR is essentially a law enforcement agency. We have 12 enforcement offices in cities around the country where students, parents, educators, or concerned citizens can submit complaints when they are concerned that a student's civil rights are being violated. And then those enforcement agencies will investigate the complaints, and hopefully reach a conclusion that's amenable to all parties. We enforce, as I mentioned, both Section 504 and title II with respect to students with disabilities. And those laws are fairly similar actually, at least in purpose. They both protect students with disabilities from discrimination by educational institutions, including institutions of higher education.

Where they are different is mainly in their jurisdiction. Section 504 applies to entities that receive federal financial assistance. So that could be public or private schools, as long as they receive some federal financial assistance, and that includes Pell Grants. So if students at your institution are receiving Pell Grants, that counts for purposes in pulling you under the jurisdiction of Section

504. Title II of the ADA differently applies to public entities. So that means public colleges and universities and other public entities. But these two laws, the jurisdiction overlaps significantly enough that pretty much every postsecondary institution is covered by at least one of them. So as I go forward in telling you what the requirements of law are, odds are high whatever school you are in mind it applies.

I also want to point out the difference between how these laws apply in postsecondary context as opposed to the K-12 context. They actually do apply quite differently. And just as a side note, I will say that this has come up, the transition from K-12 to postsecondary, has come up several times over the past day and a half. OCR does have a transition guide on our website, and I don't have the website for that immediately. But if you look up the Office for Civil Rights website, and Glinda has it, there is a transition guide for students and also for high school counselors, two separate documents, that kind of walk through the process and how those are different.

But specifically, what you need to know is that in the higher education context there is no such thing as a 504 plan. There is no child find requirement. So the student is not required to seek out students that may have disabilities and provide services in an active way. And postsecondary students also don't have the same right to a free appropriate public education that K-12 students do. So in the postsecondary setting, the onus is really on a student to actively seek out the accommodations that they want. And that means that they go to the disability student services office and request what they need. And if they don't make that self-identification, which they are not required to do, but if they don't make that self-identification and that request, then the school has no obligation to provide any kind of auxiliary aids or services.

As far as what the law does require substantively, both Section 504 and Title II require that institutions of higher education provide auxiliary aids and services to students where they are necessary and to qualified students with disabilities. And that require as little bit of unpacking because half of what I just said are terms of art in the Office for Civil Rights world. Under our laws, a person with a disability is defined as anyone who has a physical or

mental impairment that substantially limits one or more major life activities or has a record of such impairment or is regarded as having such an impairment. And then in order to be a qualified person with a disability in the postsecondary context, that would be a person with a disability who with or without reasonable modifications and/or the provision of auxiliary aids and services meets the academic and technical standards requisite for admission or participation in the program.

The auxiliary aids and services that must be provided once a student meets threshold of being a qualified student with a disability must be provided when they are necessary for the qualified student with a disability to have an equal opportunity to participate in and enjoy the benefits of an educational program or activity. And I guess I kind of want to point out because we talked a lot in the past couple of days the term "print disability." And that's also come up in the legal task force. But it's a term that's not a term of art at OCR. So we don't have a definition for print disability, and it's not a term that we use. And the reason for that is that it doesn't need to have a definition in our context because we do everything on a case-by-case basis. If a student has a disability that meet ours definition of disability, then that student goes through the appropriate channels and they get whatever auxiliary aids and services are necessary to give them an opportunity to participate in a equality opportunity program or activity.

So it doesn't matter whether it falls under the purview of print disability or not, but it just matters that they get the appropriate accommodation that meet their needs. That's why we don't have a definition and have not been using it as a term of art.

The last thing on my agenda, and I know that we're short on time is OCR complaint letters. I have gotten several questions and comments on this. OCR as I mentioned has these 12 enforcement offices around the country. And they receive thousands of complaints every year. And in response, most, not all, but most of these complaints wind up receiving a letter from their regional enforcement office that explains the outcome of the case. And that could be something as simple as, well, it was not timely so it was dismissed to, you know, we found a violation and here is what it was and here is the resolution agreement. But what we've learned is that a lot of people in the disability community,

particularly in the postsecondary setting, are using those letters as statements of OCR policy.

So I just want to take one more opportunity to reiterate that we don't consider them to be policy. And I know that that doesn't change the fact that many of you look to those for guidance. And it's appropriate to look to them for guidance in the sense that if you want to see how OCR responded in an analogous situation, but the letters themselves are limited to the specific facts of the case. And I just wanted to make that point. Specifically there was a Fullerton letter that many people have mentioned in the past. And that specifically is from Cal State Fullerton, and it's from 2003. So the other thing that I would say is that's a pretty old letter, and in terms of our policies continually evolving and especially being under a different administration, a letter that's 8 years old may no longer be as reliable as something more recent, in the sense that none of them are policy, but as far as looking to an example.

But the Fullerton letter I think was often used by people in DSS offices because it sets out some discussion of what auxiliary aids and services constitute effective communication. And a point I think that I made on the January 7th call and I want to reiterate is that if you have been relying on that, never fear because in the new Americans with disabilities Title II regulation that was recently promulgated by the Department of Justice and which takes effect in a couple of weeks, March 15th, there is a much more extensive section that will lay that all out in regulatory form so you no longer have to guess what the policy might be because that is of course a formal statement of policy. And that's going to be, if you are interested, it's going to be in Section 35.160 of the Title II regulation.

And that's all that I have for right now. So thank you.

>> MARIA PALLANTE: Thank you. Skip, do we have the new ADA regs, or could we put them in the drop box?

>> BETSEY WEIGMAN: I believe that specific one I e-mailed to you.

>> MARIA PALLANTE: Any questions for Glinda or Betsey, any points of clarification or anything?

Okay. So now I will work with the task force from both the outline that we sent in advance, and from the PowerPoint which is very brief. And starting with the PowerPoint, this is the way that we kind of oriented our discussions in the

legal group. We started with a macro-objective. What is our goal? The goal is to maximize -- did I do that?

>> SKIP STAHL: Probably.

>> MARIA PALLANTE: The goal is to maximize the number of postsecondary student for students to have access to materials, price and quality, comparable to those terms available, and remain free market. That's the goal. The question from a legal perspective -- that's everybody's goal. From a legal perspective the way that played out is that there are things that can be done using existing legal frameworks like the Copyright Act and exclusive rights and the distribution reproduction public performance issues that stem from that, licensing, collective licensing. But in the event that that doesn't work, there needs to be a regulatory legal safety net as well. And I think that it's fair to say that we all know now that in some instances licensing has worked beautifully.

In some instances, the Chaffe exception has been very clearly applied, and in a lot of instances there are a lot of people kind of flailing around somewhere in between trying to figure out what the legal framework is that can get them to where they need to go, or to get the student the materials that they need. So we need to keep operating on both of those platforms, but we're going to get into some of the specific issues now that we discussed.

So we had two guiding principles. This is the first one. Emerging technologies, converging standards, declining costs are contributing to a viable market model for accessible instructional materials. Ideally individuals will buy the accessible instructional materials on the open market. And then the question is: What role can stakeholders play? The government? Congress? Is it a question of resources? Education? Technical assistance? All of those things, how do you bring all of that together to actually get to progress.

And then, Skip, if you can go to the next slide. And this is what kept us anchored, these issues. In the event that doesn't work, or in the instances where that's not now working, what are the safeguards, legal safeguards, for us that may be necessary to ensure that students with a print disability have access in the event the market fails to serve them adequately? Are there changes necessary to existing legal regimes? And for us that may be statutory. That may be regulatory. It may be focused on additional kinds of licensing. It may be civil rights' issues. We have had many

little questions about certification and cost associated with that. That's not a copyright issue so much as a Department of Ed -- it's not really their issue, either, but it's something that we need to think about.

And a global question is, yes, there is no 504 plan, there's no right to a free education, but should there be?

(Laughter)

Is that the global kind of statement we might want to make as policy issue?

So starting with all of that as the backdrop, I would like to go back to the outline now and talk about things that we agreed on. And, again, these are going to sound very global because they're not just for the legal task force, but they anchored us. We all want fully accessible content, identical or comparable price points, reduced certification and eligibility requirements, viable new products and delivery models and not be stuck in time with textbooks while everybody else is using something more interesting if textbooks are changing. Lots of incentives for publishers and other content providers, authors. If we're not talking about just books, film companies, music producers, technology companies, all of that.

Effective and efficient licensing mechanisms and cost-efficient I think is embedded in that. And then the availability of public and private library resources as a safety net. Anything on there that anybody would like to counter? Embellish?

Okay. Well, with that, there are several substantive issues, and I am going to start with scope of the beneficiary class. Now, copyright lawyers think of this in terms of Chaffe, but this Commission is charged of think being it in a slightly broader way which is who is the beneficiary class that we're trying to serve? I would like to turn to Tuck for a few moments, because with respect to Chaffe, it's really not that old -- I mean, in terms of copyright laws it's not an old amendment to the Act. It's an Act of 1996. There were many people still around and working who were part of that negotiation. And quickly in the legal task force we arrived at the fork in the road which was what did it mean when it was enacted? And what might it mean going forward?

Is there a difference? And separate from that, if we agree that the broadest possible beneficiary class should be served, what portion of that class needs to be served through an exception?

So, Tuck, if you wouldn't mind for a moment taking us back to the beneficiary class roots.

>> TUCK TINSLEY: I would love to, and I appreciate the opportunity, Maria. Yesterday I mentioned that the blind students and Braille, that was the genesis for this committee years ago. And I got a couple of raised eyebrows, and then I had two people ask, you know, that's not true. So this is an opportunity for me to get this on the record, and I think that it's important to do so. So I certainly appreciate this opportunity.

I am going to -- and this last night I e-mailed back to staff. We have 11 librarians at APH, and they're very detailed oriented. I have e-mails this morning from the AP school division, and this wasn't planned, but I've got good data. And it's important to share it.

I am going to hit Braille bills, the accessibility committees of AP, solutions forum, instructional materials accessibility act, Bob Pasternak, and then I am going To talk about NIMAS/NIMAC and where we are now.

In 1988, in Louisiana, the first Braille bill was passed. I was at the Florida School for the Deaf and Blind. I have been there 20 years. I came to the printing house in '89. There were two more bills passed by the time I got to the printing house. Different file formats for these bills. So I called Dr. Jernigan at NFB, and I said, Dr. Jernigan, these are different file formats. And, you know, he said of course they are. And every bill that we passed will have a different file format because we want ultimately the publishers to raise their hands and say, my God, just give us one file format and we'll give it to you.

(Laughter)

And, you know, that really is what happened. In 1991, Texas and California came on. So there were 33 states in all that signed Braille bills. 17 had textbook provisions. 30 bills had been signed by 1989 -- excuse me business, 1998 when we met at the American Printing House for the Blind or our annual meeting. But before that, in 1991, we had had two Presidents of major publishing companies come to APH to help us address the issue. They flew in their own jets, I'll tell you, and although we only had 7,000 legally blind Braille users, they were really committed to helping us. And December of 1991, the AAP board voted to endorse a plan for RFB&D and APH to develop -- for the publishers to cooperate with the development agreements with RFB&D and APH.

And a concept of repository. That was December of '91. 20 years ago. December of '91.

January, the next month, January of '92 at the AP and mule meeting in Boston, Don Eckland who was the VP of the school division, and Buzz Ellis who was the AP Chair announced this endorsement of over 300 publishers of the school division. And, man, that was an exciting time. You know, we were almost there. And they are agreeing and they are working with us. And I remember I had an 18-year-old scotch that night.

(Laughter)

Chaffe came along in '96. I am not going to hit much on that Maria. The background is very important I feel. And in '94 AAP -- well, prior to that AAP had accessibility committees in the early '90s. And at one meeting there was a press conference when they were dealing Kinko. And in '94 they had a serving disabled students committee, and Tom Starbranch was here yesterday. He is the Chair of that committee now. He took over for Rick Ferry, and Rick took over for Pierce McNulty. But we've been working for years with these groups. In 1998, we met at the printing house, and they got with us and wanted to host a solution's form. Textbook instruction materials solutions forum. We had 35 participants in that meeting in October of 1998.

Katie was with AAP. George was there. Pierce McNulty was there. 35 people. And the purpose was a national collaborative effort to ensure equal access to textbook and instructional materials for blind students. The focus was blind students. Solutions forum ended up having 52 leading national organizations and associations in textbook publishing involved. Publishers were intimately involved. A lot of hard work. Many conference calls. Small group meetings. In a 11-month period from June of '99 to April of 2000, in 11 months, we had 13 update articles and publications. The focus was on blind students. It was exciting. Publishers were involved. They were responsive. Early on, though, there was a push to expand the entire Ed.

Stewart would attend the meetings who was from Oregon with the DSS offices there, we need to get in higher ed. We maintained our focus. In 2000, in Louisville, we had 77 people attend the meeting. In 2001, 84. Part of that was a committee that's called the joint technology task force committee it really started in 2000 it spun off, and the task force was created so that publishers and stakeholders from

AFB solutions forum could discuss testing and use of emerging technologies and the utilization of those file for production of accessibility textbooks for students. Now, that year, that was 2000. Carl Augusto was just thrilled because in Flint, Michigan, later that year in 2000 he was able to demonstrate for, and President Clinton played with it, this was electronic book technology.

Now this is 11 years ago. And it was Time-Warner had given rights and some money for AFB to release the public a commercial title using the NISO DAISY standard. That standard was much richer and higher and better than what we had when we got to NIMAC/NIMAS. But, of course, you know, this was focused on the blind. So the solution forum really resulted, and the blind field was ready to go it was exciting in April of 2002, after a lot of efforts, we had Chris Dodd, Connecticut, Cochran of Mississippi, and then in the House Petrie of Wisconsin and Miller introduced the IMAA. Man, we were almost there!

(Laughter)

This was legislation that was going to prove access to textbooks for blind students who are in grades K-12 by ensuring that they receive them in accessible media at the same time as their non-disabled peers. We were excited! And then came Bob Pasternak. And I think everyone feels that IMAA would have passed and would have become legislation except for the interference of Bob Pasternak who was the assistant secretary of OSERS, and he persuaded the Bush administration to oppose passage, pull it off, and let him play with it I met with him after that. In his office. And he said, "You know," he had just gotten here -- this is 2002. He was gone in 2004. 2002 and he said I got here from New Mexico. Blind people really got this together. But I am responsible for all handicapping conditions, so I want this to address everybody.

So we lost the momentum. We lost our focus at that time. And he took that, and the resulting RFP resulted in 2002 CAST receiving \$199,911 to establish technical specifications for a voluntary national instructional materials accessibility standard. That's NIMAS. That's great. Here we go so CAST dealing with it at that time brought together 40-member advisory panel that covered the waterfront. And I think that there were a couple of people representing the blind there. But I am being sarcastic, but the -- this committee covered the waterfront. And I think after a lot of effort they

finally realized the need to focus and fell back on addressing the population defined by the copyright exemption.

It resulted in NIMAS. And then much to APH's surprise, IDEA in 2004 established NIMAC at APH with the charge for to us begin operations December 3 of '06. So it was to be a repository of NIMAS files for use by authorized users to produce accessible textbooks for students with qualified disabilities. Now our concern, and our Board's concern this is going to be broader than the legally blind population. So we decided to set this up separate from APH. So that if it got too big, we could hand it back. To be honest with you. Our focus was that it would have a broader focus to blind students, and today it does. And at the first organizational meeting in D.C., Glinda, early in 2011, I shared that concern. And I also shared the fact that the NIMAS file set was much lower level and not as rich as the NISO DAISY standard that we had six years ago before the focus got too broad to do anything with.

So we've experienced a lot of frustration. Although at 12:01 A.M. on December 3, 2006, we turned it on, and it's working and it's working fine, but we're still not getting the materials for the blind students in different formats that we need.

Now we're here addressing higher Ed. And my major focus is making sure that we don't forget the blind student who this all started about. This afternoon, task force one will give a brief presentation of where we are. And in it Gaeir has developed a first straw man or trial balloon of the definition of print disabled, print disability, and it's broad. Very broad. And it's a great first effort, but it's very important for to us focus and narrow that down. I mean, this is going to be the definition of, as Betsey said, you know, they don't have a working definition of "print disabled" at OCR, but for us we have to come up with something that this entire Commission agrees to, to move forward with thanks for letting me get this on the record, and, again, the focus really we're just concerned that we don't forget who this is all about.

Was all about in the beginning. Thank you, Maria.

>> MARIA PALLANTE: thank you, Tuck. So I am going to try to pull off two things at once. I don't know if I can do it. But we'll try.

One is to look at a little bit in-depth at the Chaffe Amendment because that's what we've been doing in the task force, and looking specifically at some of the particular

terms that are used there. But at the same time trying to get the group to focus on if we had a clean slate, which in some ways the digital dawn allows us, how would we do it today as opposed to it's like the telephone system in this country. It's patchworking on top of things. If you could really build it over, what would you do? And if we can proceed on kind of both of those planes of thought, let's see what we can come up with entrepreneurially. Let me read the Chaffe Amendment, just the part of it that we have to focus on, just the beginning. But Chaffe, which is Section 121 of the Copyright Act, it's an exception which means that publishers and authors don't get paid, and knowing what we know about how exceptions work it has to be narrow, and it was enacted in 1996.

So, again, not that old. And before then everything was permission based or fair use.

It says, "It's not an infringement of copyright for a authorized entity," term number 1 that we'll address, "To redistribute two of the 6 exclusive rights, reproduce or redistribute copies of a previously published non-dramatic literary work." That's a copyright way of saying something that's not a play or television screenplay or something like that non-dramatic. "If such copies are -- or photo records are reproduced and distributed in specialized formats," what does that mean? "Exclusively used by blind." And that's cross-referenced to the 1931 statute, and incorporated in regs for NLS are different in ways that other organizations have proceeded. So there is a lot in that one sentence.

We're going to try to take these one at a time, but with the understanding that they all relate to each other. We'll look at scope of the beneficiary class. We'll look at the role of the authorized entity and definition. And we're going to look at specialized formats.

So a couple of questions, again. In the task force, there were kind of dueling conversations. One was what does it actually say and how do you interpret it? And I think it's fair to say that some members of the task force would like to see this Commission take a try at interpreting it, what it means.

And others who feel, as myself, among these that we're not a court and even if we could all agree on what it means, I'm not sure what the legal weight is. I think that somewhere in there would be a reasonable observation that if we're trying to figure out where we want it to go, or how we

move forward, we need to first figure out where we are today. So is that fair?

So let me turn to my task force and ask Peter and Jim and Jim and anyone else who wants to weigh in what do you think is the appropriate beneficiary class for an exception to copyright as opposed to the beneficiary class that we should be looking at as a Commission in terms of service? Anyone? They are suddenly so shy.

(Laughter)

>> JIM FRUCHTERMAN: You don't have to invite me twice.

I think that what we identified as this lack of clarity. We heard a lot about this from DSS offices, you know, we have RFB&D, which is part of getting Chaffe drafted, who obviously feels that dyslexic people are part of the group that are served. And we also have alternate versions of history who said it was never about dyslexic people, it was only about blind people. And I think that a lot of the conversation that we had is rather than debate labels, why don't we talk about people who are so disabled they can't use a print book effectively? Because we think that's what the law said it was for, and actually a lot of the legal language talks about these sorts of disabilities. We're not aiming at the person who is mildly disabled. And, therefore, there may be many people who are disabled students under the definitions being used that don't apply to this, but I think that the other issue, and maybe, you know, Jim may touch on this one, is we've heard a lot about stigma attached to learning disabilities.

And the conversation that we often have about this adds to that stigma.

And there is this theme that dyslexia is not a real disability. It's laziness. Just try harder. And that's the way that you fix this. And one of the great things about science is that we've actually looked into this in the last 20 years, and we have a large body of science that says people with dyslexia are just as really disabled and physically disabled as a blind person. It's just that what's different about them isn't what going on with their optic nerve or their eye, but it's something else that has to do with their processing. We can see that in brain scans and the like.

So I think that we don't have MDs diagnose dyslexia. They actually have zero professional capability to make such a diagnosis with some rare exceptions. And instead they have

professionals that do. So I think that's the essence of what we feel the Commission -- the Commission was asked to weigh in on definitions in Chaffe, right? We were asked to look at authorized entity and beneficiary class and issues like that. And I think that if we could make some recommendations for clarity and say, "Here are people who more clearly apply and more clearly don't," we really would have advanced the ball of serving the most disabled students and making it clear that they are entitled to services instead of having to continue to butt up against stigma and prove that dyslexia is a real disability.

>> MARIA PALLANTE: Jim, you had your hand up.

>> VICE CHAIRMAN WENDORF: Well, I should take off my vice chair's virtual hat. I think in weighing in on this. I represent individuals with learning disabilities, and 75-80% of those people have dyslexia, reading disabilities. And I guess what I would add to that, and I think Jim set forth, you know, sort of the terms of a rationale that I think are very powerful, but what I think about is the people that we listen to last night here. And I do wish everyone on the Commission had been able to be here.

You know, we had a blind person. Very powerful. And we had people with varying kinds of learning disabilities and ADHD. I would say very powerful. And what was going through my head was that for many of the people that we listened to last night, I am not convinced that a market solution or a licensing agreement is going to solve their problems. They were hitting a ivy wall. Okay? Brick or otherwise. They were not getting what they needed in order to show that they could learn and be successful. That message came through loud and clear. Whether it was someone, you know, who was already in college, like the young woman at the University of Florida, or at Florida State, the young man at Florida State, or some of the older people who came in and made comments because they either worked with other populations or had children or grandchildren.

It was clear that we're looking at a group. And, yes, it's more than 1%. But a group of people who simply aren't being well served. And the question is -- and they are disabled when it comes to accessing print.

So is there a legitimate role for government to play in providing an exception? And I think we do need to clarify, you know, what is meant by "print disability" by a qualified person. Because right now the lack of clarity I think is

contributing to the problems on campuses. And actually is probably leading to, you know, some individuals simply not wanting to disclose, not wanting to come forward and try to move through a system and get the kinds of services that they need.

>> MARIA PALLANTE: Could somebody from higher Ed talk about the certification process that starts by I assume the summer before freshman year and how often it has to happen and how expensive it is?

>> CHAIRWOMAN DIETRICH: So the California community colleges are a little bit unique in that we actually do LD testing, and we do that for free for students. Well, I shouldn't say for free. But essentially they pay for a unit which I believe is up to like \$25 now. So for \$25 plus their other student fees, which ends up being probably another \$50, they can get LD testing. Unfortunately with the 45% cut to disability services budget a couple of years ago, that most of the campuses are not doing that. Or there is a huge, huge, huge waiting list for that but basically when anyone moves from the high school system into postsecondary, the campuses can require that they have LD testing. And it varies with the college and the system exactly what that looks like, and the California community colleges because we are aware of the cost and the difficulty.

That was why we chose to do LD testing ourselves. But a lot of other systems don't. They require the students themselves to get the testing. Sometimes the campuses are willing to take whatever the IEP or the testing was that came from K-12, but not always, because we do have slightly different standards and because the standards are slightly different it does make it more difficult for the students in that transition process. There is not the same -- how do I want to say this? Because we're not working exactly under the same laws, the definitions are not exactly the same in a nutshell. It's much easier for someone who is blind and visually impaired, blind or visually impaired I should say, because they don't have to do anything other than just take documentation to their regular eye doctor and get that signed off, and usually they have an eye doctor and they usually see that person.

So it doesn't tend to be that big of a deal for them in general. It's just, okay, I've got to do this form again.

Does that answer the question?

>> MARIA PALLANTE: Yeah. And I think that in the legal group we were trying to figure out what kind of animal this

is. Is it a regulatory animal? Is it the campus policy that can be changed?

>> CHAIRWOMAN DIETRICH: I do think that there is a statement that was made that's not completely accurate. And that statement was that the issue of who qualifies for print disability is a campus issue. And I would say that that is actually not an issue that we wrestle with on campuses at all. Because we basically are looking at can the individual benefit? If the individual has a qualifying disability and there is a determination by the qualified professionals in the office that this is a student who could benefit from using alternate formats, then we provide them alternate formats. So that's basically the bottom line for us. So we're actually looking at not just learning disabilities, but ADD, ADHD. In some cases we're actually providing alternate materials to students who are hard of hearing which might seem surprising until you remember that some of the assistive technology doesn't just talk, but it actually has the follow-the-bouncing-ball sort of highlighting that goes along which for certain individuals who have auditory processing issues helps keep them focused on where they are on the page and helps keep them moving forward.

So we're looking at it in a very different way. The other thing point think that want to make is that one of the discussions that we often have in higher ed is that all of the higher ed laws which are all state laws, by the way, and not federal laws, but all of the higher ed laws do require the students to purchase the books. And so even though, you know, there is a copyright issue there, because we are duplicating the book, and we are changing the format, and we are doing all of these things to it essentially we're doing that for someone who owns the material. And although there are issues of archiving and all those sorts of things, in our mind the fact that the student owns the material and as long as it's not shared with anyone else, that we feel fairly safe on that ground.

So that's the other reasons that we don't look to Chaffe, is that our model in higher ed is that students purchase the books. So there is the right of -- what do they call it? The right of first ownership? I forget that term.

>> MARIA PALLANTE: For sale?

>> CHAIRWOMAN DIETRICH: For sale. And I know that's not the same thing.

>> MARIA PALLANTE: But this is very helpful. And I think what this is beginning to show, and we've been through

this discussion before, is that there are practices in place that are intuitively very reasonable for the people that are following them, and they've been organically formed out of the need to achieve the mission to serve the student. It doesn't mean that they would pass a legal analysis under federal law. So that is the nut that we're trying to crack here. And I think at this point because we're headed toward lunch and I know people are probably hungry, and I don't want anybody with low blood sugar for these important conversations, what I would like to do is hit authorized entity and specialized format just to get them on the table. And then when we come back we can get into them in more detail if that's okay with the Chair.

>> VICE CHAIRMAN WENDORF: Can we run for another 15 or so and then move to lunch?

>> CHAIRWOMAN DIETRICH: Yeah.

>> MARIA PALLANTE: Because they actually do relate to each other. We don't even have all of the terms that relate to each other.

>> GEORGE KERSCHER: The cost of these, the testing to qualify LD student, I have heard 1800, 25-3,000.

>> ANDREW FRIEDMAN: Ashlee, can you talk a little bit about that?

>> ASHLEE KEPHART: I got mine done when I was either in elementary school for junior high. I think it was covered by my insurance. I don't recall having to do an additional test each time. I just had to do a lot of convincing that I still had dyslexia. When I got to my college, I just gave them a letter from the person who did my test, I gave them the records from the test, and they automatically gave me everything that I already had in high school. I didn't have to beg them or ask them anything. It was awesome.

(Laughter)

>> MARIA PALLANTE: So that's -- that would seem to indicate that the policies are uneven across the country. There are some good models that others should be focusing on.

>> CHAIRWOMAN DIETRICH: And I should clarify that that is something that is reserved to campuses to determine.

>> MARIA PALLANTE: Right. And I think that the question is, should it be, right?

>> STEPHAN HAMLIN-SMITH: I was going to say that her experience is her experience at Hamline. Her experience would not necessarily be replicated at, you know, the school across the street for instance. The other thing is that in terms of the psycho-educational testing and what different institutions require, it's very easy to get mixed up in this issue of documentation in higher education because the much lesser reason why institutions have documentation is the one of securing someone as a member of a protected class. That is nowhere near the top priority. The top priority is to understand the psycho-educational processing and learning of the student so that in working with that student you can package the accommodations, and the learning tools, and so I think that for purposes of simply classifying someone as a member of a class, that's not a tough standard to do. It's all of the other stuff that gets glommed on that, that makes this documentation business a much more complicated landscape.

>> ANDREW FRIEDMAN: You can talk about that a little bit more?

>> STEPHAN HAMLIN-SMITH: There are people sitting out here who could explain it much better than I, but if we just look strictly at someone being a qualified student, we can look to their history. We can look to them having been regarded as a student with a 504 plan, or under an IEP. That's easy. What is difficult is because of the changes in how human beings learn and process, you know, when we kind of enter adulthood and parenthood, there is a great deal of change that can occur there. Getting insight into that student's particular situation and particular needs is often what drives the desire to have recent or current documentation. And when I say "documentation" for these purposes I am talking about a psycho-educational battery of testing that addresses intelligent quotient or learning styles and processing capacities and styles and preferences. And if we take all of this and overlay that there is absolutely not a consistent standard from door to door, it is an extremely complex and in many cases unfortunately a complex barrier to students that they just say, "Forget it. I can't do this."

>> GEORGE KERSCHER: And on the dark side of education, some institutions will create this barrier so they don't have to provide services that they view as expensive.

>> MARIA PALLANTE: Okay.

>> CHAIRWOMAN DIETRICH: That's certainly not true in our colleges.

>> STEPHAN HAMLIN-SMITH: I need to say I think that I don't agree with that assessment being without something to back it up. I don't think that that is true.

>> MARIA PALLANTE: Well, there are bad things everywhere. That could be true somewhere. No one in this room.

The next issue is authorized entity. I will throw them out on the table so that we know that we have to connect the dots with all three of these as we get into a discussion after lunch. So authorized entity, it's a concept that is only meaningful under Chaffe, apparently, and meaning that those are animals that administer the exception to copyright. And they are all represented on this Commission. And there is a definition in Chaffe. So authorized entity means two prongs: A non-profit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities. So it sends you back to the beneficiary class definition of Chaffe.

In the task force, the question that rose up are: Who was intended at the time of enactment? And there are strong opinions on who Congress meant at that time. Who are the new players? Is there hooting in the back for a particular authorized entity?

Bookshare is the prime example of one that didn't exist at the time but has come up and served in a very large way that space. And then the other questions are DSS offices. To the extent that they feel the need to be an authorized entity for purposes of Chaffe, are they? Do they meet the definition? If think don't, should they be? If they should be, how would you regulate that? And then as we got into this morning a little bit, is there some hybrid role where they have a role in this space, but it's through a licensing mechanism whether it's collective or individual? So they're using that repository of instructional material that they may have access to and they can connect the student, to but they're not doing it through Chaffe. So hold that thought. Specialized format. So even though this concept -- each though Chaffe was enacted only in 1996 and not 1896, the term "specialized format" is a funny term, right?

So the definition really is meant to make a differentiation between the kinds of works that are available to the general

public, and the kind of works that might be available to the beneficiary class. However defined. Specialized formats used exclusively for use by blind or other persons with disabilities. So speaking as the Library of Congress, and NLS, and the government version of this, they are still dealing with specialized formats that no one else wants.

(Laughter)

Is that fair to say?

(Laughter)

However, they also serve a population that isn't necessarily going to buy anything on the open market, and may well be the below the poverty line in a lot of cases. So we're mailing to them little machines, and that's how that works. Not a threat to the publisher's market or potential markets.

>> GEORGE KERSCHER: But it's encrypted, and on a media that's unusual, although it's downloadable as well. But it's the encryption, the format itself, and it's DAISY, and is desirable in the market. But it's completely apart and separate through --

>> MARIA PALLANTE: The platform.

>> GEORGE KERSCHER: -- the platform.

>> MARIA PALLANTE: And that's where I am headed, George. Thank you. And that's where we should all be head after lunch when we discuss this.

(Laughter)

But the question is, obviously I assume that if we took a vote nobody wants to maintain an artificial standard that leaves the population we're trying to reach with an inferior format, platform, and set of materials, right? That would be a very odd public policy role. So the question is, as the standards get better and better, and the EPUB standards are used by both authorized entities as well as publishers, is it converging to a point where there isn't meaningful distinction? Should there be a meaningful distinction? And if there should be, and we're pulling this prong out of Chaffe, and Chaffe needs to be narrow, how does that affect the rest of the mechanism? So those are kind of big lofty global comments. But we'll pull it all together, I think, if we can discuss these as three interrelated issues.

After lunch?

>> STEPHAN HAMLIN-SMITH: Will you just say bullet points, remind us of the three things that you want to us think about?

>> MARIA PALLANTE: Beneficiary class, and that can be as it relates to Chaffe or as it relates to that's the group that you really want to put meaningful recommendations on the table for.

Authorized entity which currently has a role only under Chaffe, but perhaps there are new roles as well as license and intermediary. And these are not mutually exclusive. And the last one being the concept of specialized formats, and what does it mean? Oh, dear. Anyway with that, what time do we need to be back?

>> VICE CHAIRMAN WENDORF: I think our lunch arrived.

(Laughter)

>> J. BRUCE HILDEBRAND: It will be a heavy lunch.

>> CHAIRWOMAN DIETRICH: Can everyone be back at 1:00, please? 1:00.

(Lunch break)

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